~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 30, 2012

**S. 45**

Introduced by Senators McConnell, Campsen and Ford

S. Printed 5/30/12--H.

Read the first time March 28, 2012.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 45) to amend Chapter 15, Title 17 of the South Carolina Code of Laws, 1976, by adding Section 17‑15‑55, so as to provide that the circuit court shall consider motions, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Section 17‑15‑30 of the 1976 Code is amended to read:

“Section 17‑15‑30. (A) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community, ~~the~~ a court may, on the basis of available information, consider the nature and circumstances of ~~the~~ an offense charged and ~~the~~ an accused’s:

(1) family ties;

(2) employment;

(3) financial resources;

(4) character and mental condition;

(5) length of residence in the community;

(6) record of convictions; and

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

(B) ~~The~~ A court shall consider, if available:

(1) ~~the~~ an accused’s criminal record;

(2) any charges pending against ~~the~~ an accused at the time release is requested;

(3) all incident reports generated as a result of ~~the~~ an offense charged~~, if available~~; and

(4) whether ~~the~~ an accused is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status.

(C)(1) Prior to or at the time of ~~the~~ a hearing, the arresting law enforcement ~~officer, local detention facility officer, or local jail officer, as applicable, attending the hearing~~ agency shall provide the court with the following information, if available:

~~(1)~~(a) the accused’s criminal record;

~~(2)~~(b) any charges pending against the accused at the time release is requested;

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

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

~~(D)~~(2) The arresting law enforcement ~~officer, local detention facility officer, or local jail officer, as applicable,~~ agency shall inform the court if any of the information ~~required in subsection (C)~~ 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 ~~officer, local detention facility officer, or local jail officer, as applicable,~~ agency to provide the court with the information ~~required in subsection (C)~~ does not constitute grounds for the postponement or delay of the person’s hearing.

(D) If a person has previously been released on bail pending trial and during the release the person is charged with and arrested for a violent offense as defined by Section 16‑1‑60 while out on bond, and a court finds by a preponderance of the evidence, that no condition or combination of conditions will reasonably assure the person’s appearance as required or the safety of another person and the community, the court may deny the person’s release pending trial.

(E) A court hearing ~~this matter~~ these matters has contempt powers to enforce ~~these~~ the provisions of this section.”

SECTION 2. Chapter 15, Title 17 of the 1976 Code is amended by adding:

“Section 17‑15‑55. (A)(1) The circuit courts, at their discretion, may review and reconsider bond for general sessions offenses set by summary court judges. Also, the circuit courts shall consider motions regarding reconsideration of bond for general sessions offenses set by summary court judges upon motions filed with the clerks of court. Hearings on these motions must be scheduled.

(2) After a circuit court judge has heard and ruled upon a defendant’s motion to reconsider a bond set by a summary court judge, further defense motions to reconsider may be heard by the circuit court. The circuit court may hear defense motions to reconsider based on the length of time the defendant has been held for trial. The chief judge shall schedule a hearing.

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

(2) If the state’s motion to revoke or modify bond includes a prima facie showing of imminent danger to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an bond hearing to be conducted by the circuit court judge or a designee. The chief judge shall order the solicitor to notify the defense counsel and bond surety of the time and date of the hearing, and the solicitor shall provide proof that notice was made. Upon notice by the State, the defense counsel and bond surety shall make reasonable efforts to notify the defendant of the hearing and secure the defendant’s presence at the hearing. The court may not proceed with the hearing in the absence of the defendant, defense counsel, or bond surety.”

SECTION 3. Section 17‑15‑10 of the 1976 Code is amended to read:

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

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

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

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

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

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

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

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

SECTION 6. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND CHAPTER 15, TITLE 17 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, BY ADDING SECTION 17‑15‑55, SO AS TO PROVIDE THAT THE CIRCUIT COURT SHALL CONSIDER MOTIONS REGARDING RECONSIDERATION OF BOND FOR GENERAL SESSIONS OFFENSES SET BY A SUMMARY COURT JUDGE; TO PROVIDE THAT FURTHER DEFENSE MOTIONS TO RECONSIDER BOND MAY BE HEARD BY THE CIRCUIT COURT ONLY UPON THE DEFENDANT’S PRIMA FACIE SHOWING OF A MATERIAL CHANGE IN CIRCUMSTANCE; TO PROVIDE THAT MOTIONS BY THE STATE TO REVOKE OR MODIFY A DEFENDANT’S BOND MUST BE MADE IN WRITING, STATE WITH PARTICULARITY THE GROUNDS FOR REVOCATION OR MODIFICATION, AND SET FORTH THE RELIEF OR ORDER SOUGHT; AND TO PROVIDE THAT, IF THE STATE’S MOTION TO REVOKE OR MODIFY BOND INCLUDES A PRIMA FACIE SHOWING OF IMMINENT DANGER TO THE COMMUNITY, OR IMMINENT DANGER TO THE DEFENDANT, OR FLIGHT BY THE DEFENDANT, THE CHIEF JUDGE OR PRESIDING JUDGE SHALL CONDUCT OR ORDER AN EMERGENCY HEARING WITHIN FORTY‑EIGHT HOURS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 17‑15‑30 of the 1976 Code is amended to read:

“Section 17‑15‑30. (A) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community, ~~the~~ a court may, on the basis of available information, consider the nature and circumstances of ~~the~~ an offense charged and ~~the~~ an accused’s:

(1) family ties;

(2) employment;

(3) financial resources;

(4) character and mental condition;

(5) length of residence in the community;

(6) record of convictions; and

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

(B) ~~The~~ A court shall consider, if available:

(1) ~~the~~ an accused’s criminal record;

(2) any charges pending against ~~the~~ an accused at the time release is requested;

(3) all incident reports generated as a result of ~~the~~ an offense charged~~, if available~~; ~~and~~

(4) whether ~~the~~ an accused is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status; and

(5) whether the source of funds used to post bail were derived from criminal activity.

(C)(1) Prior to or at the time of ~~the~~ a hearing, the arresting law enforcement ~~officer, local detention facility officer, or local jail officer, as applicable, attending the hearing~~ agency shall provide the court with the following information, if available:

~~(1)~~(a) the accused’s criminal record;

~~(2)~~(b) any charges pending against the accused at the time release is requested;

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

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

~~(D)~~(2) The arresting law enforcement ~~officer, local detention facility officer, or local jail officer, as applicable,~~ agency shall inform the court if any of the information ~~required in subsection (C)~~ 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 ~~officer, local detention facility officer, or local jail officer, as applicable,~~ agency to provide the court with the information ~~required in subsection (C)~~ does not constitute grounds for the postponement or delay of the person’s hearing.

(D) If a person has previously been released on bail pending trial and during the release the person is charged with a violent offense as defined by Section 16‑1‑60, and a court finds, by a preponderance of the evidence, that no condition or combination of conditions will reasonably assure the person’s appearance as required or the safety of another person and the community, the court shall deny the person’s release pending trial.

(E) A court hearing ~~this matter~~ these matters has contempt powers to enforce ~~these~~ the provisions of this section.”

SECTION 2. Chapter 15, Title 17 of the 1976 Code is amended by adding:

“Section 17‑15‑55.(A)(1) The circuit courts, at their discretion, may review and reconsider bond for general sessions offenses set by summary court judges. Also, the circuit courts shall consider motions regarding reconsideration of bond for general sessions offenses set by summary court judges upon motions filed with the clerks of court. Hearings of such motions must be scheduled. The rules of evidence do not apply to bond hearings.

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

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

(2) If the state’s motion to revoke or modify bond includes a prima facie showing of imminent danger to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court judge or a designee, including a summary court judge, within forty‑eight hours of receiving service of the state’s motion. The chief judge shall order the solicitor to notify the defense counsel and bond surety of the time and date of the hearing, and the solicitor shall provide proof that reasonable efforts were made to affect such notice. Upon notice by the State, the defense counsel and bond surety shall make reasonable efforts to notify the defendant of the emergency hearing and secure the defendant’s presence at the hearing. The court may proceed with the hearing despite the absence of the defendant, defense counsel, or bond surety. Upon receiving notice of the chief judge’s order for an emergency hearing, the bond surety may surrender the defendant to the county of jurisdiction’s detention center in accordance with Section 38‑53‑50(b). If an emergency bond hearing is held without the presence of the defendant or defense counsel, and bond is revoked, the judge having heard the matter may conduct a hearing on the defendant’s motion to reconsider the revocation. Such defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety.”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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