CHAPTER 15

Bail and Recognizances

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

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

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

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

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

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

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

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

Effect of Amendment

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

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

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

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

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

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

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

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

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

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

Editor’s Note

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

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

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

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

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

 (1) family ties;

 (2) employment;

 (3) financial resources;

 (4) character and mental condition;

 (5) length of residence in the community;

 (6) record of convictions; and

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

 (B) A court shall consider:

 (1) a person’s criminal record;

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

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

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

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

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

 (a) a person’s criminal record;

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

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

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

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

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

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

Effect of Amendment

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

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

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

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

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

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

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

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

Effect of Amendment

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

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

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

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

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

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

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

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

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

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

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

Effect of Amendment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

HISTORY: 1990 Act No. 549, Section 1.

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

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

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

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

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