Court Administration Update

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CASE LAW UPDATE

Sloan v. SCDOR

- FOIA Case
- When a public body does not render a final opinion within the15 day determination period, FOIA provides for both declaratory and injunctive relief. FOIA also provides for attorney's fees and costs to the prevailing party.
- In this case, due to the DOR's failure to comply with the requirements of FOIA, the prevailing party is entitled to an award of reasonable attorney's fees and costs.

Sloan v. SCDOR

- This case serves as a reminder of the importance of being aware that a request is made based on FOIA and the timeline for responding.
- SC Supreme Court – August 20, 2014

State v. Taylor

- DUI case
- COA held §56-5-2953 does not require dismissal of a DUI charge when the video recording of the incident briefly omits the suspect if that omission does not occur during any of those events that either create direct evidence of a DUI or serve important rights of the defendant.

State v. Taylor

- Here, although the video recording omitted Taylor from its view during the repositioning of the officer's patrol vehicle, none of the field sobriety tests administered and none of the other statutory requirements occurred while she was out of the camera's view.
- December 23, 2014

Rodriguez v. U.S.

- Search and seizure case
- US Supreme Court held that absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures.

Rodriguez v. U.S.

- Brief synopsis of the facts: A K-9 officer stopped Rodriguez for a traffic violation. After the officer attended to everything relating to the stop, including checking the driver's licenses of Rodriguez and his passenger and issuing a warning for the traffic offense, he asked Rodriguez for permission to walk his dog around the vehicle. When Rodriguez refused, the officer detained him until a second officer arrived. The officer then retrieved his dog, who alerted to the presence of drugs in the vehicle. The search revealed methamphetamine. Seven or eight minutes elapsed from the time the officer issued the written warning until the dog alerted.

Rodriguez v. U.S.

- Holding: A police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution's shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation becomes unlawful if it is prolonged beyond the time reasonably required to complete the issuance of a ticket for the violation.
- April 21, 2015

EMMA'S LAW

- Effective October 1, 2014
- Revised penalty for DUS 3rd or subsequent
- D must be punished with a fine of $1,000, and imprisoned for up to 90 days or confined to a person's place of residence pursuant to the Home Detention Act for **up to** 90 days. (It was previously between 90 days and six months.)
- No portion of a term of imprisonment or confinement under home detention may be suspended by the trial judge **except when the court is suspending a term of imprisonment upon successful completion of the terms and conditions of confinement under home detention.** For purposes of this section, a person sentenced to confinement pursuant to the Home Detention Act is required to pay for the cost of such confinement.

DUI Penalties (DL Suspension) – 1st offense

Breath test refusal and is convicted of DUI or DUAC: the person's driver's license **must** be suspended 6 months. He is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56. In lieu of serving the remainder of the suspension, the person **may** enroll in the IIDP, end the suspension and obtain an ignition interlock restricted license. The IID is required to be affixed to the motor vehicle equal to the length of time remaining on the person's suspension. If the length of time remaining is less than three months, the IID is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the IIDP and obtained an ignition interlock restricted license, the person is subject to 56-5-2941 and cannot subsequently choose to serve the suspension.

DUI Penalties (DL Suspension) – 1st offense

- Submits to breath test and is convicted of having an alcohol concentration of less than .15: the person's driver's license **must** be suspended 6 months. He is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56. In lieu of serving the remainder of the suspension, the person **may** enroll in the IIDP, end the suspension and obtain an ignition interlock restricted license. The IID is required to be affixed to the motor vehicle equal to the length of time remaining on the person's suspension. If the length of time remaining is less than three months, the IID is required to be affixed to the motor vehicle for three months. Once a person has enrolled in the IIDP and obtained an ignition interlock restricted license, the person is subject to 56-5-2941 and cannot subsequently choose to serve the suspension.

DUI Penalties (DL Suspension) – 1st offense

- Submits to breath test and is convicted of having an alcohol concentration of .15 or more: the person **shall** enroll in the IIDP pursuant to 56-5-2941, end the suspension, and obtain an ignition interlock restricted license pursuant to 56-1-400. The IID is required to be affixed to the motor vehicle for six months. The person is not eligible for a provisional license pursuant to Article 7, Chapter 1, Title 56.

Miscellaneous

- DUI 2nd and above, shall enroll in IIDP, end the suspension, and obtain an ignition interlock restricted license. Will have IID for different periods of time depending on the offense and the timing of the offense.
- If a person chooses to not have an IID installed when required by law, the DL will remain suspended indefinitely.

IIDP At A Glance

- Emma's Law is effective for offenses **charged** on or after October 1st, 2014.
- Upon conviction, the judge **must** note on the ticket the defendant's charge – DUI with refusal, DUI less than .15, or DUI .15 or greater.
- Under Emma's Law, DUI 1st with a BAC of .15 or greater, and second and subsequent DUI convictions deem the IIDP mandatory

IIDP At A Glance

- Upon receipt of notice of conviction, SCDMV advises SC Department of Probation, Parole and Pardon Services (SCDPPPS) of qualified IIDP drivers.
- Drivers are then notified by SCDPPPS of their eligibility. All notifications from SCDPPPS are mailed to the address of record with the SCDMV. The defendant should insure the SCDMV has their correct address.

IIDP At A Glance

- Must do ADSAP
- Get Breath Alcohol Ignition Interlock Device installed on their car – three certified vendors in SC
- Upon installation of IID, drivers may seeks their ignition interlock restricted license through the DMV.
  - Driver's enrollment in the IIDP does not begin until they have been issued an IIRL through the DMV.

IIDP At A Glance

- If a person does not enroll in the IIDP when required, their DL will remain suspended indefinitely.
- Should drivers have additional IIDP requirements for multiple offenses, IIDP cases run consecutively.
- The penalties for driving without a device are as follows:
  - First offense – guilty of misdemeanor upon conviction, not less than $1,000 or not more than one year imprisonment, extended by 6 months on IIDP
  - Second offense – guilty of misdemeanor upon conviction, not less than $5,000 or not more than three years imprisonment, extended 1 year on IIDP
  - Third offense – guilty of felony upon conviction, not less than $10,000 or not more than ten years imprisonment, extended three years on IIDP

DOMESTIC VIOLENCE REFORM ACT

Overview

- Restructures DV statutes
- State firearm prohibition
- Permanent restraining orders/emergency restraining orders
- Bond reform

Moderate Bodily Injury

- "Physical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care."

§16-25-20(A)

(A) It is unlawful to:

1) Cause physical harm or injury to a person's own household member; or
2) Offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

§16-25-20(D) – DV 3rd Degree

- Misdemeanor
- Up to ~~30~~ 90 days AND/OR $1000 - $2500 fine
- All or part of the ~~fine~~ sentence may be suspended upon successful completion of a Batterer's Treatment Program, other court orders, and restitution as appropriate. (16-25-20(E))
- Jurisdiction: MAY BE tried in Summary Court
- ~~C~~DV ~~1st~~ 3rd conviction (first offense) is eligible for expungement after 5 years (S.C. Code § 22-5-910) – can only use once, and must have no other conviction during 5-year period. Eligible for PTI.

§16-25-20(C) – DV 2nd Degree

- Violates 16-25-20(A) and
  - **Moderate bodily injury** results or the act is accomplished by means likely to result in moderate bodily injury.
  - Violates a protection order
  - Has one prior conviction of DV within 10 years
  - Presence of **"special condition"**

§16-25-20(C) – DV 2nd Degree Definitions

- Protection Order (16-25-10(6)) – any order of protection, restraining order, condition of bond, or any other similar order issued in this State or foreign jurisdiction for the purpose of protecting a household member
- Special conditions (our term, not in statute):
  - Committed in the presence of, or while being perceived by, a minor
  - Committed against a person known, or who reasonably should have been known, to be pregnant
  - Committed during burglary, kidnapping, robbery, or theft
  - Committed by impeding victim's breathing or airflow
  - Committed using physical force of threatened use of physical force to block person's access to cell phone, telephone, or electronic communication device with purpose of interfering, preventing, or obstructing report of offense to **law enforcement** or request for ambulance or emergency medical assistance to **LE or emergency medical provider**
  - →Note: Would not include attempts to call family/friends, would not include attempts to leave residence

§16-25-20(C) – DV 2nd Degree

- Misdemeanor
- Up to 3 years and/or $2500 – $5000 fine
- All or part of the ~~fine~~ sentence may be suspended and offender places on probation upon successful completion of a Batterer's Treatment Program, other court orders, terms of probation to protect V, and restitution as appropriate.

§16-25-20(B) – DV 1st Degree

- Violates 16-25-20(A) and
  - **Great bodily injury** results or the act is accomplished by means likely to result in great bodily injury.
    - GREAT BODILY INJURY (16-25-10(2)):
      - Bodily injury which causes a substantial risk of death or
      - Which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ
    - Has two prior convictions of DV within 10 years
    - Uses a firearm in any manner
- Commits DV-2nd degree and
  - Violates a protection order
  - Presence of **"special condition"**

§16-25-20(B) – DV 1st Degree

- Felony – violent and serious (violent under §16-1-60)
- Up to 10 years
- All or part of the ~~fine~~ sentence may be suspended and offender places on probation upon successful completion of a Batterer's Treatment Program, other court orders, terms of probation to protect V, and restitution as appropriate.

Previous Convictions of DV (§16-25-10(5))

- A DV charge may be enhanced (to be considered as a DV 2nd degree or DV 1st degree as appropriate) with any of the following:
  - A conviction in SC within the previous ten years for a prior CDV or DV,
  - A conviction within the previous ten years for a CDVHAN or DVHAN,
    - or
  - A domestic violence offense in another state which includes similar elements to our DV statute AND which is committed against a household member (16-25-10(3))

§16-25-20(I)

- Mandatory court appearance – no bond forfeiture
- Unless the complaint is voluntarily dismissed or the charge is dropped prior to the scheduled trial date, a person charged with a violation provided in this chapter must appear before a judge for disposition of the case or be tried in the person's absence.

§16-25-65 – DVHAN

- Violates 16-25-20(A) and
  - 1. commits the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the V results;
  - 2. commits the offense, w/ or w/o an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death; or
  - 3. violates a protection order and, in the process of violating the order, commits DV 1st degree.

§16-25-65 – DVHAN

- Circumstances manifesting extreme indifference to the value of human life include, BUT ARE NOT LIMITED TO:
  - Using a deadly weapon
  - Knowingly and intentionally impeding the normal breathing or circulation of the blood of a household member by applying pressure to the throat or neck or by obstructing the nose or mouth of a household member and thereby causing stupor or loss of consciousness for any period of time

§16-25-65 – DVHAN

- Committing offense in the presence of a minor
- Committing offense against a person he knew, or should have known, to be pregnant
- Committing the offense during the commission of a robbery, burglary, kidnapping or theft
- Using physical force against another to block that person's access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:
  - The report of any criminal offense, bodily injury, or property damage to a LEA; or
  - A request for an ambulance or emergency medical assistance to any LEA or emergency medical provider.

§16-25-65 – DVHAN

- Felony – violent and serious (violent under §16-1-60)
- Up to 20 years
- All or part of the ~~fine~~ sentence may be suspended and offender places on probation upon successful completion of a Batterer's Treatment Program, other court orders, terms of probation, and restitution as appropriate.

UTTs

- DV 2nd and 3rd degree may be written on a UTT

§16-25-30 – State Firearm Prohibition

- DV 3rd degree – discretionary
- 3 years from date of conviction or 3 years from the date the person is released from confinement for the conviction, whichever is later
- If the judge, at the time of sentencing, ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammo
- Penalty: misdemeanor, up to $1000 and/or 3 years

§16-25-30 – State Firearm Prohibition

- Waiver of Rights: A person must not be considered to have been convicted of DV for purposes of this section unless
  - They were represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case;
  - In the case of a prosecution for an offense described in this section for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise.

Factors to Consider When Setting Bond

- The bond setting statutes, §17-15-10, §17-15-30 and §22-5-510, were amended to provide the bond setting judge may consider whether the defendant's release would constitute an unreasonable danger to an individual.
- When a person is charged with a domestic violence violation under 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 (24) hours after the arrest.

Factors to Consider When Setting Bond

- The court must consider the enumerated factors listed in §16-25-120 when considering release of a person on bond who is charged with a violent offense, as defined in §16-1-60 when the victim of the offense is a household member, as defined in §16-25-10, and the person (1) is subject to the terms of a valid order of protection or restraining order at the time of the offense in this State or another state; or (2) has a previous conviction involving the violation of a valid order of protection or restraining order in this State or another state.

Factors to Consider When Setting Bond

- Enumerated factors:
  - Whether the person has a history of DV or a history of other violent offenses as defined in §16-1-60
  - Mental health of the person
  - Whether the person has a history of violating the orders of a court or other governmental agency; and
  - Whether the person poses a potential threat to another person.

Reconsideration and Revocation of Bonds

- 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. §17-15-50.
- §17-15-55 regarding reconsideration of bond has been amended to add a subsection at the end stating "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." Pursuant to §17-15-55(B), motions by the State to revoke a bond must be made in writing, state with particularity the grounds for revocation 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.

Emergency Restraining Orders

- NOT available in municipal courts
- If the Common Pleas court is not in session for the complainant to obtain a permanent restraining order, the Magistrate Court has jurisdiction over an action seeking an emergency restraining order.
- Different from restraining orders against harassment and stalking

SERVICE OF ARREST WARRANTS ON SCDC INMATES (HALL V. STATE)

EXPUNGEMENTS

§17-22-950: Criminal Chgs in Summ Ct resulting in NG or dismissal

(A)(1) When criminal charges are brought in a summary court and the accused person is found NG or if the charges are dismissed or nolle prossed, pursuant to Section 17-1-40, the presiding judge of the summary court, at no cost to the accused person, immediately shall issue an order to expunge the criminal records, including any associated BWs, of the accused person unless the dismissal of the charges occurs at a preliminary hearing or unless the accused person has charges pending in summary court and a court of GS and such charges arise out of the same course of events. This expungement must occur no sooner than the appeal expiration date and no later than thirty days after the appeal expiration date. Except as provided in item (2), upon issuance of the order, the judge of the summary court or a member of the summary court staff must coordinate with SLED to confirm that the criminal charge is statutorily appropriate for expungement; obtain and verify the presence of all necessary signatures; file the completed expungement order with the clerk of court; provide copies of the completed expungement order to all governmental agencies which must receive the order including, but not limited to, the arresting law enforcement agency, the detention facility or jail, the solicitor's office, the magistrates or municipal court where the arrest or bench warrant originated, the magistrates or municipal court that was involved in any way in the criminal process of the charge or bench warrant sought to be expunged, and SLED. The judge of the summary court or a member of the summary court staff also must provide a copy of the completed expungement order to the applicant or his retained counsel. The prosecuting agency or appropriate law enforcement agency may file an objection to a summary court expungement. If an objection is filed by the prosecuting agency or law enforcement agency, that expungement then must be heard by the judge of a general sessions court. The prosecuting agency's or the appropriate law enforcement agency's reason for objecting must be that the:

(a) accused person has other charges pending;

(b) prosecuting agency or the appropriate law enforcement agency believes that the evidence in the case needs to be preserved; or

(c) accused person's charges were dismissed as a part of a plea agreement.

(2) If criminal charges are brought in a summary court and the accused person is found not guilty, or the charges are dismissed or nolle prossed pursuant to Section 17-1-40, and **the person was not fingerprinted for the violation,** then, upon issuance of the order, the summary court shall coordinate with the arresting law enforcement agency to confirm that the person was not fingerprinted for the violation; obtain and verify all necessary signatures; and provide copies of the completed expungement order to the arresting law enforcement agency and all summary courts that were involved in the criminal process of the charges. The summary court is not required to provide copies of the completed expungement order to SLED. All summary courts that were involved in the criminal process of the charges shall destroy all documentation related to the charges, including, but not limited to, removing the charges from Internet-based public records. All other provisions of subsection (A)(1) apply.

(B) If the prosecuting agency or the appropriate law enforcement agency objects to an expungement order being issued pursuant to subsection (A)(1)(b), the prosecuting agency or appropriate law enforcement agency must notify the accused person of the objection. This notice must be given in writing at the address listed on the accused person's bond form, or through his attorney, no later than thirty days after the person is found not guilty or his charges are dismissed or nolle prossed.

§17-1-40: Expungement; retention of certain info by LE or prosecution agencies

- (A) For purposes of this section, "under seal" means not subject to disclosure other than to a law enforcement or prosecution agency, and attorneys representing a law enforcement or prosecution agency, unless disclosure is allowed by court order.

(B)(1) If a person's record is expunged pursuant to Article 9, Title 17, Chapter 22, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22-3-330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person must be destroyed and no evidence of the record pertaining to the charge or associated bench warrants may be retained by any municipal, county, or state agency. Provided, however, that:

(a) Law enforcement and prosecution agencies shall retain the arrest and booking record, associated bench warrants, mug shots, and fingerprints of the person under seal for 3 years and 120 days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations and prosecution of the offense, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal. The information is not a public document and is exempt from disclosure, except by court order.

(b) Detention and correctional facilities shall retain booking records, identifying documentation and materials, and other institutional reports and files under seal, on all persons who have been processed, detained, or incarcerated, for a period not to exceed 3 years and 120 days from the date of the expungement order to manage the facilities' statistical and professional information needs, and to defend the facilities and the facilities' employees during litigation proceedings, except when an action, complaint, or inquiry has been initiated. The information is not a public document and is exempt from disclosure, except by court order.

(2) A municipal, county, or state agency, or an employee of a municipal, county, or state agency that intentionally violates this subsection is guilty of contempt of court.

(3) Nothing in this subsection requires the South Carolina Department of Probation, Parole and Pardon Services to expunge the probation records of persons whose charges were dismissed by conditional discharge pursuant to Section 44-53-450.

(C)(1) If a person's record is expunged pursuant to Article 9, Title 17, Chapter 22, because the person was charged with a criminal offense, or was issued a courtesy summons pursuant to Section 22-3-330 or another provision of law, and the charge was discharged, proceedings against the person were dismissed, or the person was found not guilty of the charge, then law enforcement and prosecution agencies shall retain the evidence gathered, unredacted incident and supplemental reports, and investigative files under seal for 3 years and 120 days. A law enforcement or prosecution agency may retain the information indefinitely for purposes of ongoing or future investigations, other law enforcement or prosecution purposes, and to defend the agency and the agency's employees during litigation proceedings. The information must remain under seal. The information is not a public document, is exempt from disclosure, except by court order, and is not subject to an order for destruction of arrest records.

(2) If a request is made to inspect or obtain the incident reports pursuant to the South Carolina FOIA, the law enforcement agency shall redact the name of the person whose record is expunged and other information which specifically identifies the person from copies of the reports provided to the person or entity making the request.

(3) If a person other than the person whose record is expunged is charged with the offense, a prosecution agency may provide the attorney representing the other person with unredacted incident and supplemental reports. The attorney shall not provide copies of the reports to a person or entity nor share the contents of the reports with a person or entity, except during judicial proceedings or as allowed by court order.

(4) A person who intentionally violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days, or both.

(5) Nothing in this subsection prohibits evidence gathered or information contained in incident reports or investigation and prosecution files from being used for the investigation and prosecution of a criminal case or for the defense of a law enforcement or prosecution agency or agency employee.

(D) A municipal, county, or state agency may not collect a fee for the destruction of records pursuant to this section.

(E)(1) This section does not apply to a person who is charged with a violation of Title 50, Title 56, or an enactment pursuant to the authority of counties and municipalities provided in Titles 4 and 5.

(2) If a charge enumerated in item (1) is discharged, proceedings against the person are dismissed, the person is found not guilty of the charge, or the person's record is expunged pursuant to Article 9, Title 17, Chapter 22, the charge must be removed from any Internet-based public record no later than thirty days from the disposition date.

(F) The State Law Enforcement Division is authorized to promulgate regulations that allow for the electronic transmission of information pursuant to this section.

(G) Unless there is an act of gross negligence or intentional misconduct, nothing in this section gives rise to a claim for damages against the State, a state employee, a political subdivision of the State, an employee of a political subdivision of the State, a public officer, or other persons.

Summary Court Expungement Procedure

- §17-22-950: When criminal charges are brought in summary court and the accused person is found not guilty or if the charges are dismissed or nolle prossed, pursuant to §17-1-40, the presiding judge of the summary court, at no cost to the accused person, immediately shall issue an order to expunge the criminal records of the accused person unless:
  - the dismissal of the charges occurs at a preliminary hearing, or
  - the accused person has charges pending in summary court and GS and charges arise out of the same course of events.
- Expungement must occur no sooner than the appeal expiration date and no later than thirty days after the appeal expiration date (41 days).

- Upon issuance of order, the court must obtain necessary signatures and hold order pending:
  - possible appeal by state, or
  - objection by prosecuting agency or appropriate LEA based on (1) accused person has other charges pending; (2) the evidence in the case needs to be preserved; or (3) accused person's charges were dismissed as a part of a plea agreement.
  - Objection filed in summary court; transferred and heard in GS, with notice to accused
- If upheld, court provides copies of order to all governmental agencies which must receive the order including, but not limited to, the arresting law enforcement agency, the detention facility or jail, the solicitor's office, the magistrate or municipal court where the arrest warrant originated, the magistrate or municipal court that was involved in the criminal process of the charge sought to be expunged, and SLED. The judge of the summary court or a member of the summary court staff also must provide a copy of the completed expungement order to the applicant or his retained counsel.
- The summary court should keep a copy of all expungement orders in a nonpublic location in their office.

Expungement of Courtesy Summonses

- Process is the same as if it was made on a warrant or UTT, but courts do not send the expungement order to SLED.
- If law enforcement had involvement, expungement order goes to them.
- Any documentation held by the court should be destroyed/deleted.

Internet-Based Public Records

- If a person is charged with a violation of:
  - Title 50 (wildlife)
  - Title 56 (vehicles)
  - County or municipal ordinance
- And it is discharged, dismissed or found not guilty, the charge must be removed from any internet-based public record no later than 30 days from the disposition date.

Internet-Based Public Records

- Charge must be removed from the public index within 30 days of the disposition date.
  - CMS has made this automatic
- NOT a true expungement. Courts do NOT destroy any records related to these charges.
- Records are subject to FOIA.

BUDGET PROVISO

- **61.12.** (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.

Now what?

- Screening
- Appointment
- What happens if D is not represented by counsel even if he wanted it?

MISCELLANEOUS

AG Opinion – Ordinance

- Re: validity and enforcement of a town ordinance restricting the use of electronic communication while driving.
- The AG concluded that local legislation regulating the use of wireless electronic communication devices while driving is now expressly preempted pursuant to §56-5-3890(G). That statute addresses the unlawful use of a wireless electronic communication device while operating a motor vehicle and became effective June 9th, 2014. (Texting and driving statute)

AG Opinion – Jury Trial

- Re: whether a defendant who has demanded a jury trial in summary court can waive such a demand by conduct.
- Because SC law does not recognize that either the SC Constitutional Right to Trial by Jury or the summary court right to trial by jury embodied in §14-25-125 and §22-2-150 can be waived by conduct alone, the criminal defendant's failure to appear, by itself, cannot be deemed a waiver or forfeiture of such a right. Instead, the right to trial by jury can only be waived where a review of the complete record demonstrates, by a totality of the circumstances, that a knowing and voluntary waiver has occurred.

AG Opinion – Jury Trial

- Re: the waiver of jury trial forms that some summary courts are utilizing, and concluded that by themselves, those documents are inadequate to demonstrate a knowing and voluntary waiver of an individual's right to trial by jury.
- While such waiver forms may be reviewed as part of the "complete record," the summary courts must continue to look to the totality of the circumstances to determine whether a criminal defendant who fails to appear for trial has knowingly and voluntarily waived his or her right to trial by jury.

Advisory Opinion

- Re: the propriety of a magistrate judge considering ex parte communications from the arresting agency prior to a bond hearing
- The Commission concluded a judge may consider the specific information listed in §22-5-510(C) communicated by an arresting agency, outside the presence of the accused, prior to a bond hearing and still comply with the Code of Judicial Conduct.

Advisory Opinion

- "Here, S.C. Code § 22-5-510(C) specifically provides that an arresting agency shall provide certain information to the judge prior to or at the bond hearing. Thus, the judge is expressly authorized by law to accept and consider ex parte communications on the topics specified in S.C. Code § 22-5-510, prior to a bond hearing. While the statute does not specify whether the ex parte communications should be in writing or whether they may be verbal, it would be prudent to have the communications in writing so they can be made a part of the record."

Rule Changes

- Rules 16 and 19, SCRMC, regarding motions for new trials were amended. These rule changes conform to §22-3-1000 which was amended on June 6th, 2014.
- M/ New Trial may not be heard unless made w/in 10 days from the rendering of judgment (doesn't apply to LL/T cases)

Rule Changes

- Rule 45, SCRCP, re: service of a subpoena was amended.
- Paragraph (b)(1) was amended to provide that fees for attendance and reimbursement for mileage must be tendered when the person arrives in accordance with the subpoena, rather than at the time of the service of a subpoena.
- Amendment clarifies that a person commanded to appear is entitled to a fee for each day's attendance, and mileage is properly measured from the person's residence to the location commanded in the subpoena.
- Parties issuing subpoenas commanding the attendance of a person should take care to promptly notify the person if his or her attendance is no longer required because a trial, hearing, or deposition has been cancelled or rescheduled.

Powdered and Crystalline Alcohol

- §61-6-20 relating to the definition of alcoholic liquors was amended to include powdered or crystalline alcohols when hydrolyzed in the definition of alcoholic liquors.
- §61-6-4157 relating to the prohibition to possess, use, sell, or purchase powdered alcohol was amended to include both powdered and crystalline alcohol when hydrolyzed.

MISCELLANEOUS QUESTIONS

- If a City has a City Ordinance that controls traffic control devices, i.e. Violation of Traffic Control device, can the city officers use that in place of the State Statue?
- Ordinances are considered constitutional until challenged. However…

- Motion to reopen requests:
- 22-3-1000 states no hearing may be heard if filed after 10 days. Why are we told to schedule MTR hearings for anyone asking for one if the judge can't hear it after 10 days have passed?

- Can a Municipality create an ordinance to regulate style? Specifically the young men wearing their pants below their butt cheeks.
- No.