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**SOUTH CAROLINA
JUDICIAL BRANCH**

UPDATES & COURT-APPOINTED ATTORNEYS

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- Court-appointed attorneys
 - "critical stage of proceeding" – when is appointed counsel required?
 - Not bond hearing, not prelims
 - Pre& post-trial motions, trial, sentencing/restoration – yes
 - & if jail-time is likely to be imposed (Argersinger / Shelton)
 - Direct, summary contempt – no; constructive (out of presence of court contempt) – yes



**SOUTH CAROLINA
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**Remote Communications Technology (RCT)
Order (as amended Feb. 19, 2025)**

“The February 19, 2025 amendments eliminate prefatory language based on the passage of time, provide instructions about the proper conduct of these proceedings, and clarify when judges have discretion to conduct proceedings using Remote Communication Technology in certain civil proceedings without the consent of all parties.”



**SOUTH CAROLINA
JUDICIAL BRANCH**

Remote Communications Technology (RCT) Order (as amended Feb. 19, 2025)

- “[P]rovide instructions about the proper conduct of these proceedings”
- (c)(11)(A) – Powers and Decorum: clarifies that remote locations are extensions of the courtroom, and that participants should follow ordinary courtroom decorum, protocol, and dress



Remote Communications Technology (RCT) Order (as amended Feb. 19, 2025)

- RCT – includes telephone / conference calls
- Enhanced Remote Communication Technology – WebEx, Zoom, Teams, etc. that “allows audio and video to be shared at differing locations in real time.”
- Order states when ERCT must be used



Remote Communications Technology (RCT) Order (as amended Feb. 19, 2025)

- Victims' Rights – “....Nothing in this order shall be construed as preventing a judge, in the exercise of discretion, from allowing a victim to hear and/or view a proceeding or trial by RCT.”
- Public Access – “....When a portion of a proceeding is being conducted in a courtroom open to the public, this requirement is satisfied if the testimony presented using RCT can be heard by any observers in the courtroom.”



Remote Communications Technology (RCT) Order (as amended Feb. 19, 2025)

- Bail Hearings in Criminal Cases – “At the discretion of the judge, a hearing to set bail, modify the terms of bail or to revoke bail for a criminal defendant may be conducted in whole or part using RCT.”
- Preliminary Hearings – With the consent of the defendant and the representative of the State, a preliminary hearing may be conducted using RCT. Further, even without consent, a judge may allow a witness to testify at a preliminary hearing using RCT if the judge finds there is sufficient justification to do so.



Remote Communications Technology (RCT) Order (as amended Feb. 19, 2025)

- Criminal Sentencing, Non-Capital Cases – Consistent with the broad discretion given to judges in sentencing, a judge may allow testimony or other information to be presented using RCT during sentencing in a noncapital case.
- Other Proceedings – Except for those proceedings addressed in other sections of this order, judges may, in their discretion, use RCT, either in whole or part, for pretrial proceedings. This includes, but is not limited to, hearings on motions, proceedings on procedural matters such as rights advisements or waivers of those rights, and status conferences.



Remote Communications Technology (RCT) Order (as amended Feb. 19, 2025)

GUILTY PLEAS

- Judge, defendant, lawyers must be present. Judge may allow other persons, including victim, interpreter, LEO, to participate via RCT.*
- Plea by incarcerated defendant may be done in whole or part using RCT if the parties consent.
- * But see plea by affidavit



Order Re: Resolution of Certain Summary Court Level Offenses (i.e., Plea by Affidavit)

- Ability to conduct these reaffirmed by Order dated July 15, 2025
- Defendant must have lawyer
- Charge must not carry jail time, or prosecuting LEO and defense attorney must have agreed to plea w/o recommended jail time
- Still must comply with Victims' Bill of Rights



South Carolina Hands-Free Act (H. 3272)

- Takes effect September 1, 2025; However, only warnings may be issued for first 180 days
- May not:
 - "Hold or support, with any part of the body" a mobile electronic device. Does not prohibit earpiece, or wrist-worn device for voice-based communication
 - Read, compose, or transmit text
 - Watch video, movie, game, video call on mobile electronic device



South Carolina Hands-Free Act (H. 3272)

- Does not apply:
 - If parked or stopped
 - Using voice-to-text to send communication (so long as device isn't being held or supported)
 - Reporting accident or emergency
 - Navigation, listening to audio, obtaining traffic info, so long as not typing or holding/supporting device



South Carolina Hands-Free Act (H. 3272)

- Does not apply continued:
 - Initiate or end phone call, so long as not held/supported
 - Unlocking device, so long as not held/supported
 - Using OEM equipment /services



South Carolina Hands-Free Act (H. 3272)

- Penalties:
 - \$100 fine, may not be suspended
 - 2nd or Subsequent - \$200 + 2 points, may not be suspended
 - Offenses w/i 3 years for 2nd or Subsequent



South Carolina Hands-Free Act (H. 3272)

- Explicitly preempts local ordinances regarding mobile device use while driving
- LE may stop person solely for violation of this law. However, they cannot
 - Search, seize, view or require forfeiture of the device
 - Request to search vehicle b/c of violation
 - Make custodial arrest solely b/c of violation



Fines, Fees, Assessments

- State Treasurer may once again withhold payments to municipalities for:
 - Failing to submit audited financial statements w/i 13 months of end of FY, as required by 14-1-208 – ALL PAYMENTS
 - Audit report containing “significant finding” related to court fine reports or remittances – 25% of payments until deficiency satisfied
 - > 90 days delinquent remitting monthly court fines report – 25% of payments until all monthly reports are current



Hurricane Season / Inclement Weather

- “...all state judicial officers and employees should follow the decisions made by their respective county government officials regarding delays or closings”



Judicial and Law Enforcement Personal Privacy Protection Act

- Takes effect January 1, 2025
- Covers active and former judges and certified law enforcement officers & corrections officers
- Requires that, upon submission of specific form to government agency or subdivision, that personal cell phone, home address, and tax map number be removed from “records accessible by database or image...placed on a publicly available internet website.”



Judicial and Law Enforcement Personal Privacy Protection Act

- Does not include records available for purchase or through an account
- Previously required that documents be redacted; that requirement was removed
- Does not cover information related to violations of law or regulations



Order Re: Lawyer-Legislator Protection (as Amended January 31, 2025)

- Protection from trials, Jan. 1 – July 31 & any special sessions, unless waived by the LL
- Does not have protection from “matters that are deemed an emergency by the court”
- Trial exception: criminal cases where LL is retained *after* case is two years old or older



Order re: Published Summaries of Dismissed Complaints and Confidential Discipline

- Anonymous (will not name complained-of judge)
- Will state (1) Type of Judge; (2) Brief summary of allegations; and (3) Disposition (dismissed, letter of caution, confidential admonition, or deferred discipline agreement)
- Published quarterly on sccourts.org starting Nov. 1



Conditional Discharges

- SCCA Form 629A (12/2024) – Order for Conditional Discharge
- SCCA Form 629B (12/2024) – Notification of Successful Completion of Conditional Discharge
- Amended to include violations of selling beer / liquor to underage person



Order re: Electronic Devices in Courthouses (as amended Dec. 19, 2024)

- Clarified language giving judges discretion over individual proceedings to prohibit devices
- Provides for return of device after completion of any contempt sanctions; previously required device to be returned at the end of the day



Court-Appointed Lawyers

- Why?
- *Argersinger v. Hamlin* 407 U.S. 25 (1972) – “We hold, therefore, that, absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial.”
- “A suspended sentence is a prison term imposed for the offense of conviction. Once the prison term is triggered, the defendant is incarcerated not for the probation violation, but for the underlying offense. The uncounseled conviction at that point result[s] in imprisonment, ... it end[s] up in the actual deprivation of a person's liberty, ... This is precisely what the Sixth Amendment, ... does not allow.” *Alabama v. Shelton*, 535 U.S. 654, 122 S. Ct. 1764, 152 L. Ed. 2d 888 (2002)



Court-Appointed Lawyers

- When?
- "The Sixth Amendment right to counsel attaches only at the initiation of adversary criminal proceedings, ... and before proceedings are initiated a suspect in a criminal investigation has no constitutional right to the assistance of counsel." [Davis v. U.S., 512 U.S. 452, 456–57, 114 S. Ct. 2350, 129 L. Ed. 2d 362 \(1994\)](#).
- (6) "Plainly the guiding hand of counsel at the preliminary hearing is essential to protect the indigent accused against an erroneous or improper prosecution. First, the lawyer's skilled examination and cross-examination of witnesses may expose fatal weaknesses in the State's case that may lead the magistrate to refuse to bind the accused over. [Coleman v. Alabama, 399 U.S. 1, 9, 90 S. Ct. 1999, 26 L. Ed. 2d 387 \(1970\)](#)."

Court-Appointed Lawyers

- When?
- Competency hearing is critical stage of trial at which defendant has Sixth Amendment right to counsel. [U.S. v. Sterling, 99 F.4th 783 \(5th Cir. 2024\)](#).
- The Supreme Court has narrowed but not directly reached the question of whether the judicial officer's determination of bail at "the first appearance before a judicial officer at which a defendant is told of the formal accusation against him and restrictions are imposed on his liberty" is a critical stage.... Looking beyond Supreme Court jurisprudence, the Court's review of the relevant case law reveals an emerging circuits split on the narrow issue presented. [Farella v. Anglin, 734 F. Supp. 3d 863 \(W.D. Ark. 2024\)](#)

Court-Appointed Lawyers

- When?
- The **bail hearing** on February 16th was not a **critical stage** of the prosecution and the failure to provide counsel for appellant at such hearing does not constitute ground for reversal in the absence of a showing that prejudice resulted therefrom. [State v. Williams, 263 S.C. 290, 210 S.E.2d 298 \(1974\)](#)

Court-Appointed Lawyers

- When?
- "[C]onsistently with due process, petitioner in the present case could have been sentenced more severely based simply on evidence of the underlying conduct which gave rise to the previous DUI offense. And the state need prove such conduct only by a preponderance of the evidence. ... Surely, then, it must be constitutionally permissible to consider a prior unconvicted misdemeanor conviction based on the same conduct where that conduct must be proven beyond a reasonable doubt." Nichols v. U.S., 511 U.S. 738, 748, 114 S. Ct. 1921, 128 L. Ed. 2d 745 (1994)

Thank you!

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