

Frequently Asked Questions (FAQs) in South Carolina Criminal Court

WARNING: You are strongly encouraged to seek the advice of an attorney in any legal matter. If you move forward without an attorney, it may negatively affect your legal rights. If you have questions about your legal rights or the law that affects your case, please talk with an attorney.

DISCLAIMER: The general information provided in these FAQs is not legal advice, cannot be cited as legal authority, and cannot replace the advice of an attorney licensed in South Carolina. The information in this FAQ is accurate as of the date of publication. If you decide to bring a lawsuit in a South Carolina court without an attorney, you are responsible for researching the law on your own. Please note that the presiding judge in each case decides what law applies in that case.

Criminal Court Questions:

What is General Sessions Court?

South Carolina Circuit Courts are divided into two divisions:

- 1) General Sessions (criminal court); and
- 2) Common Pleas (civil court).

General Sessions Court handles felony and misdemeanor criminal cases ranging from those with a penalty of more than 30 days and / or a \$500 fine to those carrying the death penalty.

The Magistrate and Municipal court system handles misdemeanor offenses with a penalty of 30 days or less and / or a fine of up to \$500.

What is the difference between a felony and a misdemeanor?

Felony and misdemeanor are legal terms describing the seriousness of a crime.

A felony is a very serious crime. Felonies generally carry long prison sentences of a year or more. Examples of a felony are attempted murder and cocaine trafficking.

A misdemeanor is a less serious crime. Misdemeanors carry shorter prison sentences. Examples of misdemeanor crimes include simple possession of marijuana, simple assault and battery, and tampering with an electric meter.

State law classifies crimes as felonies and others as misdemeanors. [Title 16](#) of the South Carolina Code contains a list of felonies and misdemeanors.

What are the steps in a criminal case?

After an arrest, a General Sessions case usually follows these steps:

- **Bond hearing.** This hearing occurs within 24 hours of arrest. The judge determines whether a person held in custody can be released on bond. The judge evaluates whether the defendant is a danger to the community or is likely to run away before trial. If a judge decides to release someone on bond, he sets the amount and conditions of the bond.
- **Preliminary hearing.** These hearings are available to defendants charged with serious offenses triable only in General Sessions Court. The defendant has the right to request a preliminary hearing within 10 days of the bond hearing.

- **Grand Jury.** A Grand Jury is a panel of citizens convened by the court to decide whether it is appropriate to bring charges against someone suspected of a crime. If the Grand Jury decides there is reason to bring someone to trial, it returns a “true bill” and issues an indictment. If it finds insufficient reason, it returns a “no bill.” A direct indictment is an indictment that occurs before an arrest. In this case, the defendant or his attorney arranges for the person to turn themselves into the police for processing and a bond hearing.
- **First appearance (“Roll Call”).** The first court date, known as “roll call,” is set within 45 days of arrest. Courts usually hold these on Fridays. The judge or solicitor asks the defendant or his lawyer basic questions. The judge also puts the case on a schedule. The purpose of the first appearance is to make sure the defendant will appear at trial and that he has access to a lawyer. If the defendant fails to appear, the judge will issue a bench warrant for the defendant’s arrest.
- **Second appearance.** The second court date is set within 120 days of arrest. Courts usually hold these on Fridays. The defendant tells the judge whether he wants to plead guilty or request a jury trial. The judge places the case on either a plea or a trial schedule. If the defendant fails to appear, the judge will issue a bench warrant for the defendant’s arrest.
- **Trial.** During a jury trial, the jury listens to evidence and determines if the defendant is guilty or not guilty. If the jury finds the defendant guilty, the judge imposes a sentence, which can include imprisonment, fines, probation, and death.
- **Appeals.** The defendant has 10 days after sentencing to file an appeal of a guilty plea or trial verdict. Most appeals go to the South Carolina Court of Appeals.

Appellate courts look for legal error in the conduct of the trial, but they cannot retry any facts already decided by a jury at trial. Defendants, witnesses, and others do not participate at this stage. If the appellate court finds legal error, it can send the case back to General Sessions Court for retrial or sentencing.

- **Post-Conviction Relief (“PCR”).** This process must begin within one year of sentencing or the end of appeals. Handled by the Courts of Common Pleas, PCR cases usually involve a challenge to the legal representation provided by the defense lawyer at trial. If the court chooses to grant PCR, it sends the case back to General Sessions for a new trial.

How do I post bond?

At the bond hearing a judge sets the amount and conditions of a bond. See this [form](#) used at the hearing. Magistrate or Municipal judges conduct most bond hearings. Circuit Court judges must set bond on charges where the penalty is life imprisonment or death.

Depending on the nature of the charges, several methods of posting bond are available in South Carolina. Generally, a defendant’s family, lawyer, or bonding company deposits bail with the Clerk of Court. The Clerk then provides a release letter. The family, lawyer, or bonding company takes the letter to the detention center to begin processing the defendant’s release.

For detailed information on bail proceedings, see the South Carolina Bench Book for Magistrates and Municipal Judges, Criminal Chapter, Section E “[Bail Proceedings](#).”

What is a Personal Recognizance Bond?

When released on a personal recognizance bond, a defendant gives the court his word that he will show up to future court dates. The defendant also acknowledges a debt to the court equal to the total

amount of the bond. If the defendant breaks the conditions of his bond, he owes this debt to the court, and the judge may revoke his bond and return him to jail. Judges use [Bail Proceeding Form I](#) for personal recognizance bonds.

In normal circumstances, courts release defendants on personal recognizance bonds before trial. However, if the bonding court determines that the defendant might skip court appearances or cause an unreasonable danger to the community, it will not release the defendant on a personal recognizance bond. Judges have a choice in making this determination. For a list of factors used to determine a defendant's eligibility for a bond, see [S.C. Code Ann. § 17-15-30](#).

If the judge determines that the defendant is likely to skip court appearances or pose an unreasonable danger to the community, the judge may place conditions on the defendant's release and / or require a cash bond. Typical conditions include limiting who the defendant can associate with, where the defendant can travel, and where the defendant can live.

Where do I pay?

The Clerk of Court accepts bond payments. The Clerk holds the payment until the case reaches a final disposition by guilty plea, dismissal, or trial. The Clerk of Court then releases the payment to the defendant or his surety.

What is a “cash percentage in lieu of bond”?

Cash percentage in lieu of bond is an alternative to hiring a private bail bondsman. When released with cash percentage in lieu of bond, the defendant pays no more than 10% of the overall bond in order to secure his release. If the defendant violates the conditions of his release, he owes the full amount to the court. See [S.C. Code Ann. § 17-15-15](#).

What is “cash in lieu of bond”?

When released on cash in lieu of bond, the defendant pays the entire amount of his bond to the court. If the defendant violates the conditions of his release, he may forfeit the entire amount.

What is a Surety Bond?

A surety is someone who guarantees the court that a defendant will appear at court and obey bond conditions. Bail bondsmen are the most common sureties. Bail bondsmen are licensed by the state and have standing lines of credit with the courts. They charge fees for their services, generally requiring an initial payment totaling 10-15% of the overall bond amount.

Family members or other individuals also act as sureties. An individual can secure the release of a defendant by depositing the entire amount of the bond with the court or by pledging property to the court as collateral.

If the defendant violates the terms of his release, the surety may lose the bond amount or property. [Bail Proceeding Form II](#) covers cash payments and surety bonds.

How do I post a property bond?

A property bond is a claim held by the court against the property of a surety. If the defendant breaks the conditions of his bond, the surety may lose the property. Acceptable properties include homes and land, but not mobile homes.

To secure a property bond, you must do the following:

- 1) Apply to the clerk of court using the [Application for Pledge of Real Estate for Surety Bond](#);
- 2) Have a lawyer complete a [Certificate of Value of Real Estate for Bond](#). In order to complete this form, the lawyer will perform a title search on your property; and

3) File [Notice of Pledge of Real Estate](#) and other documentation as required.

NOTE: Each county may have slightly different procedures and requirements.

How do I get the bond amount modified?

A General Sessions judge can modify a bond set by a Magistrate or Municipal Court judge. Modifications go both ways, judges can increase or decrease the bond amount. To get a bond modification, file a Motion to Reconsider Bond with the Clerk of Court.

When is my trial date?

Circuit Solicitors keep the trial schedule, which is called a “roster” or “docket”. There are 16 circuits in South Carolina. The Commission on Prosecution Coordination has a listing of the Circuit Solicitors’ contact information on its [website](#).

How do I find out if there is a bench warrant on me?

Judges issue bench warrants when a defendant fails to show up for a court appearance. After your first appearance, you must show up every time there is a General Sessions term of court in your county. The Judicial Department calendar lists terms of court. Use this [map](#) to access the calendar and find out when General Sessions is sitting in your county.

Check with your local law enforcement office or the Clerk of Court to find out if a judge issued a bench or arrest warrant against you.

What if I do not have the money for a lawyer?

If you are accused of a crime punishable by imprisonment, you are constitutionally entitled to legal representation. If you cannot afford a

lawyer and meet certain financial qualifications, a Public Defender will represent you.

How do I apply for a Public Defender?

Contact the Public Defender's office in the county where you were charged with a crime. The office will require you to complete the [Affidavit of Indigency and Application for Counsel](#) and a screening interview. Most Public Defenders conduct screening in detention centers and in their offices.

The Commission on Indigent Defense maintains a [list](#) of Public Defenders' offices on its website.

Why do I have to pay a \$40 application fee?

South Carolina law requires that every person who applies for a Public Defender pay the fee.

What if I cannot afford the fee?

If you cannot afford the fee, the court may waive or reduce it.

Can I choose who represents me?

You do not get to choose your appointed lawyer. Public Defenders and appointed lawyers are all lawyers in good standing with the South Carolina Bar.

What if I am not satisfied with my appointed lawyer?

If you are not satisfied with your appointed lawyer, you should first talk to that lawyer about your concerns.

Sometimes the judge asks the defendant if he was satisfied with his appointed lawyer. The only way to remove your lawyer is to make a

Motion to Relieve Counsel. You can ask your lawyer to make this motion to the judge.

Judges have a choice to grant and deny these motions. A defendant must show sufficient cause to have his lawyer removed. Sufficient cause is a tough standard to meet. Disliking your lawyer or disagreeing with your lawyer is not sufficient grounds for removal.

What are the qualifications of a Public Defender?

Public Defenders are lawyers licensed and qualified to practice law in South Carolina. Some Public Defenders are employees of Circuit Public Defender offices. Other Public Defenders are private lawyers appointed by the court to work on a case-by-case basis.

The Commission on Indigent Defense is the statewide organization responsible for Public Defenders. If you have additional questions regarding Public Defenders, the Commission's [website](#) has a set of useful [FAQs](#).

Where can I get a copy of my police report?

Contact the arresting agency and follow their procedure.

This information is also given to you or your lawyer at your first appearance through a process called discovery.

How do I get a transcript of my hearing?

You may request a copy of your transcript by writing a letter to the court reporter. You cannot subpoena (demand through legal process) your transcript. The letter must include the date of the proceeding, the name of the judge, the name of the county where the hearing was held, and the name of the case. To find out this information, follow the following steps:

- To find out the date of your proceeding, start with the Judicial Department calendar. It covers every court term starting in January 2002. Use this [map](#) to access the calendar for the county and circuit where you had your proceeding.
- Once you find the correct term and judge, click on the blue link. The link will provide you with the name and mailing address of the court reporter;
- The court reporter will typically reply in writing within two weeks. The reply will tell you how much it costs to get the transcript;
- Send your payment to the court reporter. Send either a money order or a certified bank check. Court reporters do not take personal checks or cash; and
- Once the court reporter gets your payment, he or she has 60 days to deliver the transcript to you. Court Administration may grant more time to the court reporter, but if it does, the court reporter will let you know. See [South Carolina Appellate Court Rule 607](#).

For further information, follow this [link](#) to the Judicial Department website. If you do not have internet access, you may contact the Office of Court Administration to get your court reporter's address.

Can I get a copy of my record?

Criminal records are available from SLED, the South Carolina Law Enforcement Division. There is a fee to get either an electronic or paper copy of your record. Follow this [link](#) to request your record.

What if I receive a SLED background check and the information provided is incorrect?

SLED has a process for challenging the accuracy of an arrest, charge, or conviction that appears on a criminal record:

- 1) Contact SLED to request a challenge packet;
- 2) Complete the application, provide a picture ID, and submit a \$25 money order or a copy of the criminal record in question to SLED; and
- 3) Go to a law enforcement agency for fingerprinting. SLED will check your fingerprints with those in the record to find out if the record matches the correct individual.

NOTE: This process applies only to challenges of SLED records. It does not apply to records maintained by third-party background check companies.

Can I get a copy of my whole criminal file?

The Clerk of Court keeps files from all of the General Sessions cases heard in that county. You can get a copy of your file by asking the Clerk of Court's office for it and paying for the copies. It helps if you have your case number.

Where can I get my warrant number?

You first get this information at the bond hearing. You get it again as part of the discovery process at your first appearance. The Clerk of Court also has this information in your case file.

Is my charge a felony or a misdemeanor?

To determine the level of the charges against you, find the specific offense in [Title 16](#) of the South Carolina Code. If your case is in General Sessions Court, it is likely a felony.

Will the charge I plead to be a felony or a misdemeanor?

It depends. If you are pleading guilty without negotiating a plea bargain with the Solicitor, you plead to the offense charged in your indictment.

Sometimes the Solicitor will negotiate a plea bargain with you or your lawyer. In a plea bargain, a defendant exchanges his guilty plea for the opportunity to plead to a lesser offense, to receive a lower sentence, or to have other charges dismissed.

Sometimes a defendant has the opportunity to plead to a lower version of the offense than the one charged by the Grand Jury. These lower charges are called lesser included offenses. Sometimes the lesser included offense will be a felony, sometimes it will be a misdemeanor. If you are uncertain about the charge you are pleading to, make sure your lawyer explains it to you.

NOTE: You have ten days to appeal a guilty plea.

How do I get jail time?

The judge gives jail time after a guilty plea or a trial. Judges have the choice to set sentences as they see fit within minimums and maximums established by state law. Judges base sentencing on the circumstances of the offense, the defendant's criminal history, and other mitigating factors. Some offenses carry mandatory minimum and maximum sentences that leave the judge with little choice. The [Sentence Sheet](#) records the sentence and other important information about the final disposition of a case.

How do I get credit for time served?

South Carolina law requires that you are credited with time served in prison before sentencing, unless you were in prison serving a sentence for a different crime or you were in prison as an escapee from a different correctional institution. The Department of Corrections, not the judge, handles the calculation. See [S.C. Code Ann. § 22-13-40](#).

What is the total cost of my court fees and how do I pay?

The total cost depends on the offense and is set by state law or regulation. Costs are itemized, added up, and recorded on your Sentence Sheet. You pay fines and fees to the Clerk of Court.

Why do I have to pay court costs?

South Carolina law requires that you pay for the court costs for your case. If you plead guilty, plead no contest to charges, or are convicted, you are responsible for court costs. If the Public Defender's office represented you and you got probation, you must pay the \$500 public defender fee required by state law, as a condition of probation.

Where do I pay?

You pay court costs to the Clerk of Court. Many counties have an online payment system.

What is the disposition of my case?

Disposition refers to the final status of the case. It tells you how the case ended. For example, the sentence received by someone convicted of a crime is the final disposition of the case. If you are unsure of the status of your case, try a [case records search](#).

NOTE: Records from some counties are not available.

Is my case pending or ended?

If the case is pending, it is still open and unresolved. If ended, the case is closed and has a final disposition.

What does the status “ended” mean?

An ended case is one resolved by trial, plea deal, or dismissal of the charges. After indictment by a grand jury, the only way for a case to end without a trial or a plea deal is for the Solicitor to drop the charges or to “nol pros” (not prosecute) the case.

Can I speak with the judge about my case?

No. You cannot discuss your case with the judge outside of the courtroom. This rule prevents either side from gaining an unfair advantage.

How do I file an appeal?

Most appeals begin after you are sentenced in General Sessions Court.

To begin an appeal, serve copies of your Notice of Appeal on the other side, called the “respondents.” Then, file Notice of Appeal with both the appellate court and the General Sessions Court.

[South Carolina Appellate Court Rule 203](#) governs the form and content of the Notice of Appeal. The South Carolina Court of Appeals also has a set of [FAQs](#) that provide useful information about the appellate process.

When do I serve and file the notice of appeal?

After receiving a sentence from a plea, conviction, or revocation of probation, you have 10 days to serve the Notice of Appeal on the respondents (the other side).

In the case of post-trial motions made under [Rule 29](#) of the South Carolina Rules of Criminal Procedure, the 10 day window does not begin to run until you receive notice of the trial court’s order deciding your motion.

After serving the other side, you have 10 days to file with the clerk of both the Court of Appeals and the General Sessions Court.

NOTE: These deadlines are strict. If you miss the deadline, you lose your right to appeal. See South Carolina Appellate Court [Rule 203](#) for guidance.

Resources

- If you do not understand the information in these FAQs, you may want to contact an attorney.
- To find an attorney who practices law in this area, please contact the South Carolina Bar's Lawyer Referral Service (LRS) at 1-800-868-2284 (toll free). LRS offers a referral by location and type of law. The lawyers who sign up with LRS are in good standing with the South Carolina Bar and must maintain malpractice insurance coverage. The lawyers also agree to a 30-minute consultation for no more than \$50. After the 30-minute consultation, the fees will be the lawyers' normal fees. Once you receive a referral, you will be expected to contact the lawyer by telephone to make an appointment.