

THE SOUTH CAROLINA COURT SYSTEM

The structure of the courts for the administration of criminal justice follows a similar pattern in all states, although some will have more appellate levels than others. Every state has at least two different types of trial courts, one of which hears relatively minor cases and the other the more serious cases. There is also an appellate system for the review of the decisions from each type of trial court.

In South Carolina this structure includes:

A. Magistrate Courts

Since the early 1990s the criminal jurisdiction of magistrate's court has been expanded considerably. Magistrates now have jurisdiction of all offenses subject to fine not exceeding \$500 or imprisonment not exceeding thirty days or both. Economic crimes including, among others, larceny and shoplifting, are now triable in magistrate's court if the amount of property taken is less than \$1,000; the magistrate in such a case may impose incarceration for not more than thirty days or a fine of not more than \$1,000.

If one was convicted of several offenses, the magistrate could give consecutive sentences of up to ninety days. The ninety-day limitation does not apply in cases of shoplifting or fraudulent checks. For example, one convicted of five fraudulent-check offenses could receive consecutive sentences totaling 150 days.

Magistrates also have authority for issuing arrest warrants and search warrants, setting bail, and conducting preliminary hearings. The preliminary hearing is sometimes called a probable-cause hearing, and it is at this hearing that the magistrate makes a determination on the basis of the evidence presented by the circuit solicitor, police, or prosecuting party, as to whether there is probable cause to believe that the accused committed the offense charged. If probable cause is not found, the magistrate may dismiss the charge. If there is probable cause to believe that the defendant committed the crime, the accused is bound over to the grand jury which hears prosecution evidence and determines whether to issue an indictment. Once an indictment is issued, the case is scheduled for trial in the court of general sessions. There is no constitutional right to a preliminary hearing. In a number of jurisdictions, if the grand jury makes its determination of probable cause first, the preliminary hearing would not be held.

Magistrates have civil jurisdiction when the amount in controversy does not exceed \$5,000. However, in landlord-tenant matters and cases of bastardy, their jurisdiction is not limited by a dollar amount. Counties are divided into magisterial districts which range in number from three to twenty-two per county. There is no requirement that a magistrate be an attorney.

B. Municipal Courts

Councils of municipalities may, by ordinance, establish municipal courts which have jurisdiction over all cases arising under the ordinances of the municipality, and state laws, both subject to the limitations of a maximum fine of \$500 or thirty days imprisonment or both. This is the same jurisdictional limitation which applies to criminal cases in magistrate's courts and, in the absence of an organized municipal court, violations of municipal ordinances may be tried in magistrate's court. A municipal court judge may suspend sentencing upon such conditions, including restitution and public services, as he deems appropriate. Municipal courts have no jurisdiction in civil matters, but otherwise municipal judges have the same powers that magistrates have under law.

C. Probate Courts

Each county in South Carolina has a probate judge, elected for a four-year term. These judges preside over and administer the probate courts which have jurisdiction over estates of deceased persons, guardianship of minors and incompetents, and involuntary commitments to mental institutions. They have no jurisdiction in criminal matters.

D. Masters in Equity

Masters in equity have jurisdiction in equity matters referred to them by the circuit courts. Masters are appointed by the governor for a four-year term in either a part- or full-time capacity. They have no jurisdiction in criminal cases. Their jurisdiction is civil, and decisions are subject to appeal to the circuit courts.

E. Circuit Courts

The state is divided into sixteen (16) judicial circuits, each of which has at least one resident circuit judge who maintains his office in his home county within the circuit where he sits six months of the year. As of mid-1996 there are forty-three circuit judges who rotate court terms and assignments

for six months of each year.

There are two types of circuit courts. The courts of common pleas hear civil matters; and the court of general sessions hear criminal cases. However, the same judges serve both general sessions and common pleas courts. Circuit courts also have appellate jurisdiction over appeals from probate, magistrate, and municipal courts. That is, a case tried in one of these lower courts may be appealed to the circuit court if it can be shown that there may have been error in the lower court. If there was no error, the court will affirm; if there was error, the case simply may be reversed, or it may be reversed and remanded back to the lower court for retrial, depending upon the nature of the error.

All adult criminal cases which are beyond the jurisdiction of the magistrate and municipal courts are heard in general sessions court. This means that all criminal offenses subject to the penalty of a fine of more than \$500 or imprisonment for more than thirty days will go to the court of general sessions following indictment. Jurisdiction is based only on the fine and/or possibility of imprisonment. Whether a crime was a felony or misdemeanor does not determine which court has jurisdiction over the offense, although all felonies do, in fact, carry punishments which place them beyond the jurisdiction of the magistrate's courts. Misdemeanors are punishable by incarceration for up to three years, so many of these are beyond the jurisdiction of magistrate's court.

F. Family Courts

Family courts have exclusive jurisdiction of all matters concerning family relationships. They hear all cases about marriage, divorce, separation, custody and visitation rights, termination of parental rights, adoption, child support, alimony, division of marital property, and change of name.

Family courts in South Carolina have exclusive jurisdiction over minors under the age of seventeen (17), subject to two exceptions. Generally, the children who come before the family court are charged with an offense which would be criminal if they were adults; but they may also come under family court jurisdiction for acts which are considered offenses only because they are not adults. These are classified as status offenses and include acts such as truancy, running away from home, disobeying parents, and drinking alcohol. As of January 1, 1996, family court judges acquired the authority to sentence status offenders to secure facilities in the Department of Juvenile Justice for up to ninety (90) days. Code §20-7-2205. Minors tried as juveniles carry no criminal record into adulthood with them; their records are sealed and may

only be opened in exceptional circumstances.

The South Carolina Code provides for two exceptions to family court jurisdiction. 1. Magistrate, municipal, and general sessions courts have concurrent jurisdiction with the family court over minors charged with traffic offenses. This means the case may be heard in any of those courts if they would have had jurisdiction over the offense charged if committed by an adult. 2. The family court may, in certain cases, bind over a minor for criminal proceedings in either general sessions or magistrate's court if the minor is sixteen (16) years old and is charged with a misdemeanor or felony.

A child of sixteen or older, if charged with a real criminal offense as opposed to a status offense, may be tried as an adult in circuit court, if the family court waives jurisdiction.

There are forty-six family court judges in the sixteen circuits of South Carolina.

G. Court of Appeals

The South Carolina Court of Appeals has appellate jurisdiction of questions of law and equity arising in the circuit and family courts of the state except in five classes of cases which are appealable directly to the supreme court. These are final judgments from circuit courts which involve:

1. death penalty cases,
2. public utility rate cases,
3. challenges on state or federal grounds to the constitutionality of state laws or municipal ordinances,
4. authorization or issuance of general obligation debt by the state or any of its political subdivisions, and
5. election laws.

The nine (9) judge court is empowered to sit in three panels of three judges each, or it may sit as a whole. Decisions of the court are final and not subject to further appeal except by petition for discretionary review by the state supreme court.