

The Supreme Court of South Carolina

RE: BOND HEARING PROCEDURES IN SUMMARY COURTS

ORDER

I find that recent events have necessitated my revisiting the previous Order of the Chief Justice dated November 28, 2000, concerning bond hearing procedures and detention facility issues arising in magistrate and municipal courts.

Accordingly, pursuant to Article V, § 4, of the South Carolina Constitution,

IT IS ORDERED that the Chief Magistrate in each county, in cooperation with, and with input from the other magistrates and municipal judges, shall arrange a schedule so that a magistrate or municipal judge will always be available, in person or on-call, to conduct bond proceedings. The Chief Magistrate shall also inform the municipal courts of the details of the County bond schedule, so as to ensure the availability of a magistrate to issue warrants and conduct bond proceedings for the municipal courts when the municipal judge is unavailable. After hours and weekends does not

constitute unavailability in and of itself. The Chief Magistrate shall establish a procedure with all municipal courts within the County whereby they provide the Chief Magistrate with a monthly bond schedule indicating their availability for bond court. Nothing in this Order precludes counties and municipalities from entering into agreements whereby magistrates set bond on criminal charges arising from municipalities within their County.

Bond proceedings shall be conducted at least twice daily, once in the morning and once in the evening, at specific times which take into consideration all agencies involved. Should a Chief Magistrate desire to specify a schedule which deviates from the twice daily schedule, the revised schedule and the reason for the deviation must be submitted in writing to the Chief Justice for approval. Any deviations from the twice daily schedule approved prior to the issuance of this Order remain in effect. Nothing in this Order precludes a Chief Magistrate from regularly scheduling bond hearings more than twice daily. If, under extraordinary circumstances, the on-call magistrate or municipal judge is requested to conduct a bond hearing at a time other than the regularly scheduled time, hearings shall be held for the entire jail population eligible for release. The on-call magistrate or municipal

judge shall immediately inform the Chief Magistrate that a special bond proceeding was conducted.

All persons incarcerated, booked, and charged with a bailable offense must have a bond hearing within twenty-four hours of their arrest as required by S.C. Code Ann. § 22-5-510, except for those individuals who are released on bond in lieu of recognizance pursuant to S.C. Code Ann. § 22-5-530. Any county or municipality utilizing the provisions of S. C. Code Ann. § 22-5-530 must comply with the Order of the Chief Justice dated December 11, 2003, which addresses procedures required by that statute. All persons incarcerated, booked, and charged with a non-bailable offense must have a first appearance before a magistrate or municipal judge within twenty-four hours of their arrest. Further, in all cases which fall under the purview of this Order, whether bailable or non-bailable, the bonding magistrate or municipal judge must ensure that the procedures set forth in S.C. Code Ann. §§ 16-3-1505 to –1830, regarding victims' rights, are fully observed.

All incarcerated individuals statutorily required to receive a bond hearing must receive an in-person bond hearing conducted by a duly appointed judicial officer prior to their release. Bond hearings shall not be conducted over the telephone and orders of release shall not be transmitted by

facsimile from remote locations. The only exception to these requirements is in those counties where videoconferencing of bond hearings is approved by Order of the Supreme Court. All videoconferencing must strictly adhere to the requirements set forth in the Order of the Supreme Court dated May 2, 2006.

Further, any individual initially incarcerated without having been formally charged with the violation of a crime, who remains incarcerated for a maximum of twenty-four hours of delivery by law enforcement to the detention facility without having been formally charged with the violation of a crime, shall be discharged from the detention facility by the magistrate or municipal judge conducting bond hearings. However, if law enforcement or a prosecutorial agency presents compelling written evidence to the bonding magistrate or municipal judge as to why an individual should not be released within twenty-four hours pursuant to this provision of this Order, the bonding magistrate or municipal judge, after considering the evidence, may delay discharge of the defendant for an additional period not to exceed twenty-four hours. Any written evidence presented and accepted by the bonding judge as compelling evidence to delay the release of an uncharged individual must be immediately forwarded to the Chief Magistrate of that county. The Chief

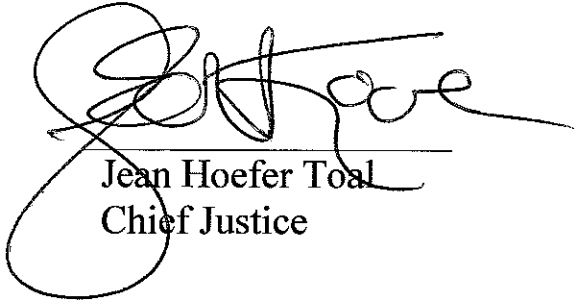
Magistrate in each county is responsible for coordinating with the necessary local officials, which includes, but may not be limited to, the custodian of the detention facility, local law enforcement, and any affected prosecutorial agencies, to ensure that the required and proper accounting, notification, and release of individuals under this provision of this Order is fulfilled, regardless of whether the initial detention was initiated by municipal or county law enforcement.

Finally, bond proceedings shall be open to the public and press, and must be conducted in a facility or manner so as to facilitate any parties, including victims, who wish to attend. Allowance of cameras in the courtroom must comply with Rule 605, SCACR, which addresses media coverage in court proceedings. If facilities are not conducive to the allowance of general access, the location of bond hearings must be changed to allow such access. Alternatively, entities may consider videoconferencing of bond hearings to accommodate access of parties where facilities are prohibitive to access.

Any violation of the provisions of this Order shall be reported immediately to the Office of Court Administration. Any preferential treatment in bonding procedures is a violation of this Order and of the

Canons and Rules of Judicial Conduct, Rules 501 and 502, SCACR, and shall be treated accordingly.

This Order revokes and replaces the previous Order of the Chief Justice dated November 28, 2000, regarding bond hearings. The provisions of this Order are effective immediately.



Jean Hofer Toal
Chief Justice

September 19, 2007
Columbia, South Carolina