**South Carolina General Assembly**

124th Session, 2021-2022

**H. 3289**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pope, McGarry, Bryant, V.S. Moss, Haddon, Forrest and Caskey

Document Path: l:\council\bills\bh\7304ahb21.docx

Introduced in the House on January 12, 2021

Currently residing in the House Committee on **Judiciary**

Summary: Pretrial release on bond

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/9/2020 House Prefiled

12/9/2020 House Referred to Committee on **Judiciary**

1/12/2021 House Introduced and read first time ([House Journal‑page 146](file:///h:\hj\20210112.docx))

1/12/2021 House Referred to Committee on **Judiciary** ([House Journal‑page 146](file:///h:\hj\20210112.docx))

1/13/2021 House Member(s) request name added as sponsor: Caskey

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**VERSIONS OF THIS BILL**

[12/9/2020](file:///p:\pprever\2021-22\3289_20201209.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 17‑15‑270 SO AS TO PROVIDE SENTENCING ENHANCEMENTS FOR PERSONS WHO COMMIT CERTAIN ADDITIONAL CRIMES WHILE ON PRETRIAL RELEASE ON BOND; AND BY ADDING SECTION 17‑15‑280 SO AS TO PROHIBIT PRETRIAL RELEASE ON BOND FOR PERSONS CHARGED WITH COMMITTING CERTAIN ADDITIONAL CRIMES AND TO PROVIDE APPROPRIATE PROCEDURES FOR DETERMINING IF ADDITIONAL CHARGES ARE PENDING.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 15, Title 17 of the 1976 Code is amended by adding:

“Section 17‑15‑270. (A) A person must be punished by imprisonment for five years in addition to the punishment provided for the principal offense if he is on pretrial release on a personal recognizance or financial surety bond and he is convicted of committing or attempting to commit:

(1) a violent crime as defined in Section 16‑1‑60;

(2) criminal sexual conduct in the third degree pursuant to Section 16‑3‑654;

(3) domestic violence in the first or second degree pursuant to Section 16‑25‑20;

(4) common law strong arm robbery;

(5) an offense involving weapons pursuant to Chapter 23, Title 16; or

(6) an offense involving:

(a) child pornography or disseminating obscene material to a person under the age of eighteen pursuant to Article 3, Chapter 15, Title 16;

(b) failure to register as a sex offender on the Sex Offender Registry pursuant to the provisions of Article 7, Chapter 3, Title 23; or

(c) failure to register as a child abuser on the Central Registry of Child Abuse and Neglect pursuant to the provisions of Subarticle 13, Article 3, Chapter 7, Title 63.

(B) Service of the five‑year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law. The court shall impose the mandatory five‑year sentence to run consecutively. However, the five‑year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed.

(C) A person sentenced pursuant to this section is not eligible during the five‑year period of imprisonment for parole, work release, or extended work release. The five years must not be suspended, and the person may not complete the term of imprisonment in less than five years pursuant to good‑time credits or work credits, but may earn credits during the five‑year period.

(D) The additional punishment may not be imposed unless in addition to the indictment for the principal general sessions offense outlined in subsection (A), a separate indictment alleges, pursuant to this section, that the person was on pretrial release subject to the terms of bond when the principal general sessions offense was committed and conviction was had upon this additional indictment. The penalties prescribed in this section may not be imposed unless the person convicted was at the same time convicted of the underlying, substantive general sessions offense as described in subsection (A).”

SECTION 2. Chapter 15, Title 17 of the 1976 Code is amended by adding:

“Section 17‑15‑280. (A) The court shall not set bond for a person who is on pretrial release on a personal recognizance, financial surety bond, or other form of pretrial release for:

(1) an offense listed in Section 17‑15‑270(A) or for person who has a prior conviction for one of these offenses and a period of not more than five years has elapsed since the date of conviction or the release of the person from imprisonment, whichever is later, and he is charged with committing another general sessions offense; or

(2) a general sessions offense and he is charged with committing another offense listed in Section 17‑15‑270(A).

(B) It is the responsibility of the judge presiding at the initial bond hearing to ensure that law enforcement provides a current criminal record detailing pending charges before bond is set or the charges are referred to the general sessions court for consideration of detention. The judge shall notify the solicitor and clerk of court as well as any attorney appointed or retained by the defendant. The chief administrative judge or his designee shall conduct an evidentiary hearing to address the matter of bond within thirty days.

(1) If a preliminary hearing in the matter has not been held, the detention hearing also will serve as the defendant’s preliminary hearing and alleviates the need for an additional hearing pursuant to Rule 2 of the South Carolina Rules of Criminal Procedure.

(2) The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the detention hearing.

(C) Subject to rebuttal by the defendant, it is presumed that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of any other defendant and the community if the judge finds there is probable cause to believe that the defendant committed the instant crime. The presumption in favor of detention or revocation and against setting bond will not be rebutted unless the judge makes a finding that the defendant has shown by clear and convincing evidence that release on bail will not expose the public to danger and the defendant is not a flight risk.

(1) In determining whether there are conditions of release that will reasonably assure the appearance of the defendant as required and the safety of any other defendant in the community, the court shall take into account the available information concerning:

(a) the factors provided in Section 17‑15‑30; and

(b) the weight of the evidence against the defendant.

(2) The defendant must be afforded an opportunity to testify, to present witnesses, to cross‑examine witnesses who appear at the hearing, and to present information by proffer or otherwise.

(D) Defense motions for reconsideration of orders issued pursuant to this section may be heard only upon a prima facie showing of a material change in circumstances which relate to the factors provided in Section 17‑15‑30, and which have arisen since the detention hearing. The length of time the defendant has been detained pretrial does not qualify as a material change in circumstances qualifying for a reconsideration of bond or detention ordered pursuant to this section unless the defendant has been detained for more than eighteen months and the defendant is seeking a speedy trial. Information regarding the defendant’s guilt or innocence does not qualify as a change in circumstances for purposes of reconsidering bond absent the solicitor’s consent.”

SECTION 3. This act takes effect upon approval by the Governor.

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