

**South Carolina Bench Book
for
Magistrates and Municipal Court Judges

Crimes and Offenses**

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A.
Alcoholic Beverages

ALCOHOL - DISTILLERIES, ETC.

Class B or C Misdemeanor

Code §§61-6-4100 to 61-6-4120
CDR Codes 986-991, 2300-2301, 2371

Elements Of The Offense

1. That the accused did (any one or more of the following):

- a. Manufacture, sell, give, or possess a distillery or any integral part thereof, or any device for the purpose of manufacturing alcoholic liquors in violation of the law. (§61-6-4100)
- b. Knowingly permit or allow another person to have or possess or locate on the accuser's premises, any apparatus for distilling or manufacturing alcoholic liquors. (§61-6-4110)
- c. Make, transport, possess or knowingly permit upon his premises any mash, wort, wash, buck or other similar material commonly used in the manufacturing of alcoholic liquors. (§61-6-4120)

Penalty:

1st offense - fine of not less than \$600 or imprisonment for 6 months.

2nd offense - fine of \$1,500 or imprisonment for 1 year.

3rd or subsequent offense - fine of \$3,000 or imprisonment for 2 years.

BEER, WINE, ETC. - PERSONS UNDER AGE 21

Misdemeanor

Code §§61-4-50, 61-4-60, 61-4-80 and 20-7-
8920
CDR Codes 240, 602, 604, 1257

Elements Of The Offense:

- A. That the accused did sell beer, ale, porter, wine or other malt or fermented beverage to a person under the age of 21. (§61-4-50)
- B. That the accused did knowingly give false information concerning his age for the purpose of purchasing beer or wine. (§61-4-60)

OR

- C. That the accused did purchase beer or wine and give to a person not legally qualified to purchase same, for consumption while on licensed premises, (§61-4-

80)

OR

- D. 1. That the accused was a person under the age of 21.
2. That he did purchase, or knowingly possess any beer, ale, porter, wine or similar beverage. (§20-7-8920)

Penalties:

§61-4-50 - fine of \$100 to \$200 or imprisonment of 30 to 60 days, or both.

§§61-4-60 and 61-4-80 - fine not less than \$50 nor more than \$100, or imprisonment for not more than 30 days. Also, suspension of driver's license for a period of 90 days for a first offense, and a period of 6 months for second or subsequent offenses (see §56-1-746).

§20-7-8920 - fine of not less than \$25 or more than \$100. Also, suspension of driver's license for a period of 90 days for a first offense, and a period of 6 months for second or subsequent offenses (see §56-1-746).

BEER, WINE, ETC. - TAX LEVY

Misdemeanor

Code §61-4-20
CDR Code 608

Elements Of The Offense:

1. That the accused did sell or did permit to be sold, any beer, wine, ale, malt or other beverage on which the tax levied had not been paid.

Penalty:

Fine of not less than \$25 nor more than \$100 or imprisonment for not less than 10 days nor more than 30 days.

DRIVING UNDER THE INFLUENCE (DUI) OF INTOXICATING LIQUORS, ETC.

Class F Felony, Class A or C Misdemeanor

Code §56-5-2930
CDR Codes 623, 163-165

Elements Of the Offense:

1. That the accused was under the influence of alcohol to the extent that the person's faculties to drive are materially and to drive are materially and appreciably impaired; and

2. That the accused did drive any vehicle within this State.

OR

1. That the accused was under the influence of any other drug or a combination of other drugs or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired; or
2. That the accused while under the combined influence of alcohol and any other drugs, or drugs, or substances which cause impairment to the extent that the person's faculties to drive are materially and appreciably impaired; and
3. Did drive a motor vehicle within this State.

NOTE: "Faculties" must include both mental and physical faculties. The State of South Carolina vs. Sheppard, 288 S.C. 464 (1966).

The offense is exactly the same, whether the driver's condition resulted from the ingestion of alcohol or drugs or both of them.

To establish corpus delicti of offense of driving under the influence (DUI), state must present evidence establishing (1) driving of a vehicle; (2) within State; (3) while under the influence of intoxicating liquors, or drugs. State v. Smith, 328 S.C. 622, 493 S. E.2d 506 (Ct. App. 1997).

It must be shown that the defendant was driving a motor vehicle while under the influence. This requires more than just sitting behind the steering wheel of an automobile. To constitute the offense, the law requires that the vehicle be in motion while the defendant is driving.

In State v. Graves, 269 S.C. 356, 237 S.E.2d 584 (1977), it was held that the word "drive" requires the vehicle to be in motion to constitute an offense under §56-6-2930. It was further held that the requirement of showing the vehicle was in motion must be shown by either direct or circumstantial evidence. In Graves, a patrolman found the defendant leaning over the steering wheel asleep with the engine running and transmission in gear. The defendant's conviction was reversed since there was no showing by direct or circumstantial evidence that the defendant had placed his vehicle in motion while under the influence of intoxicants.

In State v. Gilliam, 270 S.C. 345, 242 S.E.2d 410 (1978), a tow truck operator found the defendant alone on the passenger side of a wrecked automobile which had gone down an embankment. Since there was evidence that the defendant admitted he was driving at the time of the accident the conviction was upheld.

Penalty: §56-5-2940

(1) By a fine of \$400 or imprisonment for not less than 48 hours nor more than 30 days, for the first offense; provided, that in lieu of the 48 hour minimum imprisonment the court may provide for 48 hours of public service employment. The minimum 48 hour imprisonment or public service employment shall be served at a time when the person is off from work and shall not interfere with his regular employment under such terms and conditions as the court deems proper; provided, further, that the court may not compel an offender to perform public service employment in lieu of the minimum sentence.

(2) By a fine of not less than \$2,100 dollars nor more than \$5,100 and imprisonment for not less than 5 days nor more than 1 year for the second offense. However, the fine imposed by this item shall not be suspended in an amount less than \$1,100. In lieu of service of imprisonment, the court may require that the individual complete an appropriate term of public service employment of not less than 30 days upon terms and conditions the court considers proper;

(3) By a fine of not less than \$3,800 nor more than \$6,300 and imprisonment for not less than 60 days nor more than 3 years, for the third offense;

(4) Imprisonment for not less than 1 year nor more than 5 years for a fourth offense or subsequent offense.

No part of the minimum sentences provided in this section may be suspended. The court may provide instead of service other sentences provided in this section. For a third or subsequent offense or for a violation of §56-5-2945 for great bodily injury, the service of the minimum sentence is mandatory. However, the judge may provide for the sentence to be served upon terms and conditions as he considers proper including, but not limited to, weekend service or nighttime service in any fashion he considers necessary.

The fine for a first offense may not be suspended. The court is prohibited from suspending a monetary fine below that of the next preceding minimum monetary fine.

For the purposes of this chapter any conviction, entry of a plea of guilty or of nolo contendere, or forfeiture of bail for the violation of any law or ordinance of this or any other state or any municipality of this or any other state that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics constitutes a prior offense for the purpose of any prosecution for any subsequent violation hereof. Only those violations which occurred within a period of ten years including and immediately preceding the date of the last violation constitute prior violations within the meaning of this section.

Upon imposition of a sentence of public service, the defendant may apply to the court to be allowed to perform his public service in his county of residence if he has been sentenced to public service in a county where he does not reside.

One hundred dollars of each fine imposed pursuant to this section must be placed by the Comptroller General into a special restricted account to be used by the Department of Public Safety for the Highway Patrol.

Two hundred dollars of the fine imposed pursuant to subsection (3) must be placed by the Comptroller General into a special restricted account to be used by the State Law Enforcement Division to offset the costs of administration of the datamaster, breath testing site video program, ignition interlock provisions, and toxicology laboratory.

EMPLOYMENT OF A PERSON UNDER 21 IN LIQUOR BUSINESS

Misdemeanor

Code §61-6-4140
CDR Codes 601, 238 -239

Elements Of The Offense:

A. That the accused did knowingly employ a person under the age of 21 to work as an employee in a retail, or wholesale, or manufacturing liquor business,

OR

B. 1. That the accused was under 21 years of age, and

2. That the accused did work as an employee in a retail, or wholesale, or manufacturing liquor business.

Penalty:

1st offense - fine of \$100 or imprisonment for 30 days.

2nd offense - fine of \$200 or imprisonment for 60 days.

3rd or subsequent offense - fine of \$300 or imprisonment for 90 days.

OPEN CONTAINERS OF BEER AND WINE IN MOVING VEHICLES

Misdemeanor

Code § 61-4-110

CDR Code 660

Elements Of The Offense:

1. That the accused did have in his possession any beer or wine in an open container in a moving vehicle of any kind while located upon the public highways or highway rights of way of this state, except in the trunk or luggage compartment.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days.

PURCHASE OF LIQUOR BY PERSON UNDER 21 OR MISREPRESENTATION OF AGE

Misdemeanor

Code §20-7-8925

CDR Codes 2460, 1259

Elements Of The Offense:

A. That the accused, under 21 years of age did purchase or knowingly possess any alcoholic liquor,

OR

B. That the accused, under 21 years of age did falsely represent his age for the purpose of procuring alcoholic liquor.

Penalty:

Fine of not less than \$100 nor more than \$200 or imprisonment for not more than 30 days. Also, suspension of driver's license for a period of 90 days for a first offense, and a period of 6 months for second or subsequent offenses (§56-1-746).

SALE OF LIQUOR TO PERSONS UNDER AGE OF 21

Misdemeanor

Code §61-6-4080

CDR Code 230

Elements Of The Offense:

1. That the accused did knowingly sell alcoholic liquors to a minor.

Penalty:

Fine of not less than \$100 nor more than \$200 or imprisonment from not less than 30 days nor more than 60 days, or both.

Failure of a person to require identification to verify a person's age is prima facie evidence of a violation of this section.

TRANSPORTING LIQUORS WITH BROKEN CAPS OR SEALS

Misdemeanor

Code §61-6-4020

CDR Code 607

Elements Of The Offense:

1. That the accused did transport alcoholic liquor in a motor vehicle, and
2. That the cap or seal on the container was opened or broken, and
3. That the alcoholic liquor was not in the luggage compartment or cargo area.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days.

UNLAWFUL PURCHASE OF ALCOHOLIC LIQUOR - GENERALLY

Unclassified Misdemeanor

Code §61-6-4050

CDR Codes 609, 241-242

Elements Of The Offense:

1. That the accused did purchase or otherwise procure any alcoholic liquor from anyone other than a licensed dealer in the State.

Penalty:

1st offense - fine of \$100 or imprisonment for 30 days.

2nd offense - fine of \$200 or imprisonment for 60 days.

3rd or subsequent offense - fine of \$300 or imprisonment for 90 days.

UNLAWFUL SALE OR MANUFACTURE OF LIQUOR - GENERALLY

Class B or C Misdemeanor

Code §61-6-4010

CDR Codes 243-245

Elements Of The Offense:

- A. 1. That the accused did manufacture, store, keep, receive, have in possession, transport, ship, buy, sell, barter, exchange, or deliver any alcoholic liquors.
2. That the alcoholic liquors were not acquired in a legal manner.

OR

- B. 1. That the accused did accept, receive, or have in his possession any alcoholic liquors.
2. That the alcoholic liquors were for an unlawful use.

Penalty:

1st offense - fine of not less than \$600 or imprisonment for 6 months.

2nd offense - fine of \$1,500 or imprisonment for 1 year.

3rd or subsequent offense - fine of \$3,000 or imprisonment for 2 years.

UNLAWFUL STORAGE OR POSSESSION OF ALCOHOLIC LIQUORS

Class B or C Misdemeanor

Code §61-6-4060

CDR Codes 246-248

Elements Of The Offense:

1. That the accused did store or have in his possession any alcoholic liquors in his place of business other than a licensed liquor store.

Note: A "place of business" includes: (1) a place where goods, wares, or merchandise are sold, offered for sale, or distributed, and also places of amusement; (2) residences and transportation vehicles when sale of merchandise is made therefrom; and (3) outbuildings, warehouses, and garages when adjacent to or used in connection with a place of business where goods, wares, or merchandise are sold, offered for sale, or distributed.

Penalty:

1st offense - fine of \$200 or imprisonment for 60 days.
2nd offense - fine of \$1,000 or imprisonment for 1 year.
3rd or subsequent offense - fine of \$2,000 or imprisonment for 2 years.

UNLAWFUL STORAGE OR TRANSPORTATION OF ILLEGAL ALCOHOLIC LIQUORS

Class B or C Misdemeanor

Code §61-6-4025
CDR Codes 249-251

Elements Of The Offense:

1. That the accused did keep, store, have in possession, carry, ship, or transport in any vehicle, vessel, aircraft or other chattel, any alcoholic liquor.
2. That the alcoholic liquor was unlawfully acquired or manufactured, or that it did not bear the proper Federal and South Carolina revenue stamps.

Penalty:

1st offense - fine of not less than \$600 or imprisonment for 6 months.
2nd offense - fine of \$1,500 or imprisonment for 1 year.
3rd or subsequent offense - fine of \$3,000 or imprisonment of 2 years.

B. Fraudulent Checks

1. Generally

S.C. Code Ann. §34-11-60 concerns the drawing and uttering of fraudulent checks. The following elements are necessary for a check to be considered fraudulent:

1. That the accused did make, draw, utter, issue, or deliver a check, draft, or order.
2. That the check was drawn or delivered with the intent to defraud.
3. That the accused did receive for the check either (a) money, (b) goods, (c) services, (d) credit, (e) anything of value, or (f) the check was used to pay rent or make a payment on a lease agreement. Goods are the wares of a merchant and any other kind or property. Credit will sustain a charge under this law if the credit is obtained through securing further advances of money, goods, or services by payment by check, draft or order, of a existing account, in whole or in part. Effective June 11, 1999, credit as defined in Section 34-11-60(d) applies to a check given in full or partial payment of any preexisting debt.
4. That the check, draft, or order was not paid by the drawee (bank) for any one of the following reasons:
 - (a) at the time the check was written, the person who wrote it:
 - (1) did not have an account in the bank named on the check, or
 - (2) did not have sufficient funds deposited in the bank named on the check to pay it, or
 - (3) put an incorrect or insufficient signature on the check.

Note: This section also makes it unlawful for anyone to aid or encourage another to write a check which he has reasonable cause to believe will be dishonored by the bank based on insufficient funds or no account.

2. Inapplicability of Statute

§34-11-60 does not apply (1) to any check where the payee knows, has been expressly notified or has reason to believe that the drawer did not have an account or have on deposit with the drawee (bank) sufficient funds to insure payment; or (2) to any check which has not been deposited to an account of the payee within 10 days from the date such check was presented to the payee; (3) to any check that was uttered more than 180 days prior to the issuance of a warrant.

PLEASE NOTE:

§ 34-11-60(d) provides ". . . [t]his section applies to a check given in full or partial payment of any preexisting debt . . ."

Payment for meals, lodging, or other goods or services at any hotel, motel, or

other hostelry by check at any time prior to or upon departure or checkout is credit as used in Section 34-11-60(d).

3. Prima Facie Evidence

a. Identity

A party who accepts a check can establish prima facie evidence of the identity of the party issuing the check. To do so, he must obtain:

- (1) full name of person presenting the check,
- (2) residence address (business address only if the check is issued by a business), and
- (3) home telephone number.

The party who receives the check may either record this information on the check, or he may note on the check the number of a check-cashing identification card which has been issued by the receiving party, such card containing the information required above, and placed on file by the receiving party. [§34-11-60(b)(1)]. This receiving party must initial the check to acknowledge that he or she witnessed the signing of such check. If the bank validates the check, this will constitute compliance with the initialing requirement.

b. Making or Uttering of Check, Proper Presentation to Drawee Bank for Payment, and Proper Dishonor

If the drawee bank (the bank on which the check is drawn) writes or stamps on the check (or on a paper attached to the check) the reason why the check is dishonored, this establishes prima facie evidence, 1) of the making or uttering of the check, 2) of the proper presentation to the drawee bank for payment, 3) of the dishonor of the check, and 4) that the check was properly dishonored for the reason written or stamped on the check. [§34-11-60(c)].

c. Knowledge of Insufficient Funds

Prima facie evidence that the drawer (the person who wrote the check) knew there were insufficient funds on deposit with the drawee bank can be established by showing:

- (1) that the check was issued, and payment was refused, or
- (2) that the drawee withdrew funds from the account with the drawee bank within 10 days following the issuance of the check. [§34-11-60(c)].

d. Fraudulent Intent

To establish prima facie evidence of fraudulent intent on the part of the drawer of the check, the party who received the check must show the following:

- (1) that the check was dishonored by the drawee bank,

(2) that he sent, by certified mail, a notice containing substantially the information set out in the sample form in §34-11-70(a) (1) to the drawer at the address on the check or check-cashing card, and

(3) that 10 days after mailing such notice, he had not received from the drawer, the amount of the check, plus a \$30 service charge. Prior to June 3, 2002, the service charge for checks \$100 or less was changed from \$25 to \$30, making the service charge on all checks \$30. [§34-11-70(a) (3)].

If the party instituting prosecution can establish the matters set out in (a) through (d) above, he will have created an inference that the defendant issued a fraudulent check. If the defendant presents no evidence or argument in his own defense, then he should be found guilty of making, uttering, or drawing a fraudulent check.

4. Stopping Payment with Intent to Defraud

S. C. Code Ann. §34-11-80 concerns stopping payment on a check, draft or order with intent to defraud. It is unlawful for anyone with intent to defraud to stop payment on a check which has been given to obtain money, credit, goods or services; provided, that such money, goods, credit or services were as represented at the time the check was issued. This section does not apply to a postdated check or to a check which the payee knew was bad.

5. Instructions for Magistrates

a. Magistrate's Information to Complainants

(1) The magistrate should be sure that the complainant has sent the required notice to the person who wrote the check, giving him 10 days in which to pay the amount owed and the \$30.00 service charge.

(2) A certificate by the payee that such notice has been sent and payment has not been made should be required before a magistrate issues a criminal warrant.

(3) Magistrates should inform the complainant that (1) he will be required to appear in court as a witness for the prosecution when the accused person is tried; and (2) he will be held liable for costs not to exceed \$41 in the event the case is dismissed for want of prosecution; and (3) in the event the defendant makes full restitution (directly to the complainant) the complainant must notify the court (orally or otherwise) at least 24 hours prior to the time set for trial of such restitution in order to be relieved of the responsibility of prosecution.

b. Dismissals (Before Trial)

S.C. Code Ann. §34-11-70 permits the magistrate to dismiss fraudulent check cases prior to trial under certain conditions.

(1) If the party applying for the warrant notifies the court at least 24 hours prior to trial and pays the administrative cost, the magistrate may dismiss the case, §34-11-70(b), **or**

(2) If the defendant satisfactorily proves that restitution has been made and pays the administrative cost, the magistrate may dismiss the case, §34-11-70 (c).

6. Magistrates' Jurisdiction and Sentencing

a. Magistrates have authority to try cases involving fraudulent checks where the amount involved is \$1,000 or less. (§34-11-90). In addition, a magistrate shall have the power to sentence any person to consecutive terms of imprisonment totaling more than 90 days. See §22-3-550.

Reminder: Be certain to determine whether each fraudulent check prosecution is a first offense or a second or subsequent offense.

b. If the amount of the check is more than \$1,000, magistrates may issue an arrest warrant and hold a preliminary examination, but may not try the case.

c. Convictions for writing bad checks of \$1,000 or less are punishable as follows:

(1) for a first conviction, **if the amount of the instrument is five hundred dollars or less**, by a fine of not less than fifty dollars nor more than two hundred dollars or by imprisonment for not more than thirty days;

(2) for a first conviction, **if the amount of the instrument is more than five hundred dollars but not greater than one thousand dollars**, by a fine of not less than three hundred nor more than five hundred dollars or by imprisonment for not more than thirty days, or both;

(3) for a second or subsequent conviction, **if the amount of the instrument is five hundred dollars or less**, by a fine of two hundred dollars or by imprisonment for not more than thirty days;

(4) for a second or subsequent conviction, **if the amount of the instrument is more than five hundred dollars but not greater than one thousand dollars**, by a fine of not more than five hundred dollars or by imprisonment for not more than thirty days, or both.

d. Convictions in the court of general sessions or any other court having concurrent jurisdiction are punishable as follows: for a first conviction by a fine of not less than \$300 nor more than \$1000 or by imprisonment for not more than 2 years, or both; and for a second or subsequent conviction by a fine of not less \$500 nor more than \$2000 and imprisonment for not less than 30 days nor more than 10 years.

NOTE: Suspension of sentence for first offense conviction is mandatory, "upon a showing of satisfactory proof of restitution and payment by the defendant of all reasonable court costs accruing not to exceed \$41." [§34-11-90(c)]. In addition, §34-11-90(d) requires payment of reasonable court costs not to exceed \$41, and a service charge of \$30 provided for in §34-11-70(a), after any conviction for writing bad checks, when the defendant is charged or fined.

Second and Subsequent Offenses - Suspension of the sentence is discretionary with the court. (See §22-3-800.)

e. §34-11-95 requires that all convictions for violations of §34-11-60 must be reported to the Communications and Records Division of SLED.

7. Municipal Court Jurisdiction and Sentencing

A municipal court is authorized to try fraudulent check cases only if the municipal governing body has passed an ordinance adopting by reference the provisions of Chapter 11 of Title 34, causing violations of those statutory provisions to be violations of the municipal ordinances. If the municipality has such an ordinance, the municipal court has the same jurisdiction and sentencing power as the magistrate courts. (§34-11-90).

C.
Offense Against Morality and Decency

ASSAULT WITH INTENT TO COMMIT CRIMINAL SEXUAL CONDUCT

Class A, C, or E Felony

Code Section 16-3-656
CDR Codes 253-255

Elements Of The Offense

1. That the accused had the intent to commit Criminal Sexual Conduct.
2. That there was an overt act toward commission of the crime.
3. That the accused failed to accomplish actual "Sexual Battery."

Penalty:

Assault with intent to commit criminal sexual conduct described in the above sections shall be punishable as if the criminal sexual conduct was committed.

SEXUAL EXPLOITATION OF MINOR BIGAMY

Class F Felony

Code §16-15-10
CDR Code 31

Elements Of The Offense:

1. That the accused is legally married, and
2. That the accused did enter into a subsequent marriage with another.

Note: The accused is not properly charged if:

- a. the first spouse has been continually absent for 7 years and the accused does not know that his or her first spouse is still living,
- b. he or she (the accused) entered into the first marriage before the age of consent,
- c. his or her spouse is under sentence of imprisonment for life,
- d. his or her marriage has been properly dissolved by annulment or divorce.
- e. The accused is properly charged if the first marriage is voidable but not void. State v. Sellers, 140 S.C. 66, 134 SE 873 (1926)

Penalty:

Fine of not less than \$500 or imprisonment for 6 months; or imprisonment for not less than 6 months nor more than 5 years.

CRIMINAL SEXUAL CONDUCT - FIRST DEGREE

Class A Felony

Code §16-3-652

Elements Of The Offense:

1. That the accused engaged in sexual battery with the victim; and
2. That one or more of the following circumstances are present:
 - a. the accused used aggravated force to accomplish the sexual battery, and/or
 - b. the victim submitted to the sexual battery under circumstances where the victim is also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act.
 - c. the accused caused the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.

Note: For definitions of sexual battery and aggravated force, refer to §16-3-651.

Penalty:

Imprisonment for not more than 30 years at the discretion of the court.

CRIMINAL SEXUAL CONDUCT - SECOND DEGREE

Class C Felony

Code §§16-3-653, 16-3-655 (B) & (C), 16-3-656
CDR Code 161, 396-397, 256

Elements Of The Offense:

1. That the accused used aggravated coercion to accomplish sexual battery

Note: Refer to §16-3-651 for definitions of aggravated coercion and sexual battery. Aggravated coercion is distinguished from aggravated force in that coercion entails a threat, where aggravated force involves the carrying out of the threat. A person is guilty of this offense if he engages or attempts to engage in sexual battery with a victim who is 11 to 14 years old and the actor is older than the victim. Also, one is guilty of this offense if the victim is 14 to 16 years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit, or is older than the victim. [§§16-3-655(3) and 16-3-656].

Penalty:

Imprisonment for not more than 20 years, at the discretion of the court.

CRIMINAL SEXUAL CONDUCT - THIRD DEGREE

Class E Felony

Code §16-3-654
CDR Code 162

Elements Of The Offense:

1. That the accused engaged in sexual battery with the victim; and
2. That one or more of the following circumstances are proven:
 - a. the accused used force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.
 - b. the accused knew or had reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used.

Note: This section is distinguished from Criminal Sexual Conduct in the First and Second Degree by the lack of "aggravated force" or "aggravated coercion" as defined in §16-3-651(c) and (b).

Penalty:

Imprisonment for not more than 10 years at the discretion of the court.

CRIMINAL SEXUAL CONDUCT WITH A MINOR – FIRST DEGREE

Exempt or Class A Felony

Code §16-3-655
CDR Code 385, 3022

Elements of the Offense:

1. That the accused engaged in sexual battery with a victim who is less than eleven (11) years of age; or
2. The accused engaged in sexual battery with a victim who is less than sixteen (16) years of age and the accused has previously been convicted of, pled guilty or nolo contendere to, adjudicated delinquent for an offense listed in § 23-3-430 (C) or has been ordered to be included in the sex offense registry pursuant to § 23-3-430 (D).

Penalty:

1. A person convicted of one (1) above must be imprisoned for a mandatory minimum of 25 years, no part of which may be suspended or probation granted, or must be imprisoned for life.

Note: If defendant has previously been convicted of first degree sexual conduct with a minor who is less than eleven years of age, he must be punished by death or by imprisonment for life.

2. A person convicted of two (2) above must be imprisoned for not less than ten (10) years, nor more than thirty (30) years, no part of which may be suspended or probation granted.

CRIMINAL SEXUAL CONDUCT WITH A MINOR - SECOND DEGREE

Class C Felony

Code §16-3-655
CDR Code 396, 397

Elements Of The Offense:

1. That the accused engaged in sexual battery with the victim who is fourteen (14) years of age or less, but who is at least eleven (11) years of age; or
2. The accused engages in sexual battery with a victim who is at least fourteen (14) years of age, but who is less than sixteen (16) years of age, and the accused is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen (18) years of age or less when he engages in illicit, but consensual, sexual conduct with another person who is at least fourteen (14) years of age.

Penalty:

Imprisonment for not more than 20 years at the discretion of the court.

DISSEMINATING HARMFUL MATERIAL TO MINORS

Class F Felony

Code §16-15-385
CDR Code 378

Elements Of The Offense:

1. That the accused knowingly disseminated harmful material to minors, and,
2. The accused sells, furnishes, presents, distributes, or allows a minor to review material that is harmful to minors.

Note: It is an affirmative defense for the defendant to show he/she was: 1) a parent or legal guardian of a minor, 2) a school, church, museum, college, university library, government agency, medical clinic, or hospital carrying out its legitimate function, 3) misled as to the age of the recipient by false proof of identification and reasonably believed the minor was at least 18 years old.

See §16-15-375 for definitions applicable to §16-15-385.

Penalty:

Fine of not more than \$5,000 or imprisonment for not more than 10 years, or both.

INCEST

Class E Felony

Code § 16-15-20
CDR Code 90

Elements Of The Offense:

1. That the accused had carnal intercourse with another person, and
2. That the person was within the following degrees of relationship:

Man with his: mother, grandmother, daughter, grand-daughter, step-mother, sister, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's daughter, father's sister or mother's sister.

Woman with her: father, grandfather, son, grandson, step-father, brother, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother and mother's brother.

Penalty:

Fine of not less than \$500 or imprisonment for not less than 1 year, or both.

INDECENT EXPOSURE

Class A Misdemeanor

Code §16-15-130
CDR Code 91

Elements Of The Offense:

1. That the accused did expose his person, and
2. That the exposure was indecent, and
3. That the exposure was willful and malicious, and
4. That the exposure was in a public place, on property of others, or to the view of any person on any street or highway.

Penalty:

Fine in the discretion of the court or imprisonment not more than 3 years, or both.

LEWD ACT UPON A CHILD UNDER 16

Class D Felony

Code §16-15-140
CDR Code 2468

Elements Of The Offense:

1. That the accused did willfully and lewdly commit, or attempted to commit, an act with or upon the body of a child under the age of sixteen, and
2. That the accused was over the age of fourteen, and
3. That the act committed was done with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of accused or of the child.

Note: This section involves acts which are usually classified as "fondling". No attempt at actual sexual intercourse need be proved for conviction under this statute.

Penalty:

Fine in the discretion of the court or imprisonment for not more than 15 years, or both.

OBSCENITY

Class F Felony

Code §16-15-305
CDR Code 372

This Section provides that it is unlawful to disseminate, procure, or promote obscenity. Any material is obscene if:

1. To the average person applying contemporary community standards, the material depicts or describes in a patently offensive way sexual conduct.
2. The average person applying contemporary community standards, relating to the depiction or description of sexual conduct would find that the material taken as a whole appeals to the prurient interest in sex.
3. To a reasonable person, the material taken as a whole lacks serious literary, artistic, political, or scientific value, and.
4. The material as used is not otherwise protected or privileged under the Constitutions of the United States or of this State.

Penalty:

Fine of not more than \$10,000 or imprisonment for not more than 5 years, or both.

PROSTITUTION

Class A Misdemeanor

Code §§ 16-15-90 thru 16-15-110
CDR Codes 640, 323, 744, 1208-1209, 324

Elements Of The Offense:

That the accused did: (any one of the following)

1. engage in prostitution.
2. aid or abet prostitution knowingly.
3. procure or solicit for prostitution.
4. expose the person for purposes of prostitution.
5. reside in a place for purposes of lewdness, prostitution, etc.
6. keep or set up a house as a brothel or bawdy house.
7. receive persons into such place for above purposes.
8. permit persons to remain in such places for said reasons.
9. procure a female inmate for a house of prostitution.
10. cause, by promise, threat or scheme a female to be a prostitute.
11. induce female to enter or leave state for purpose of prostitution.
12. give or receive a thing of value to procure female to be a prostitute.

Penalty:

1st Offense - fine not exceeding \$200 or imprisonment for not more than 30 days.
2nd Offense - fine not exceeding \$1,000 or imprisonment for not more than 6 months, or both.
3rd or Subsequent Offense - fine not exceeding \$3,000 or imprisonment for not less than 1 year, or both.

SEXUAL EXPLOITATION OF A MINOR

Class E or F Felony

Code §§ 16-15-395 thru 16-15-410
CDR Codes 379-381

Elements Of First Degree

1. The accused knew the content of the material or performance.
2. That the accused used, employed, induced, coerced, encouraged, or facilitated a minor to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting sexual activity.
3. That the accused permitted a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity.
4. That the accused transported or financed the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity.

OR

5. That the accused recorded, photographed, filmed, developed, duplicated, produced, or created a digital electronic file for sale or monetary gain material containing a visual representation depicting a minor engaged in sexual activity.

Elements Of Second Degree

1. The accused knew the content of the material or performance.
2. That the accused recorded, photographed, filmed, developed, duplicated, produced, or created digital electronic file material containing a visual representation depicting a minor engaged in sexual activity.

OR

3. That the accused distributed, transported, exhibited, received, sold, purchased, exchanged, or solicited material that contains a visual representation depicting this activity.

Elements Of Third Degree

1. The accused knew the content of the material or performance.
2. That the accused possessed material that contains a visual representation depicting sexual activity.

Note: Mistake of age is not a defense to this crime.

Penalties:

1st Degree - Imprisonment for not less than 3 years nor more than 20 years.

2nd Degree - Imprisonment for not less than 2 years nor more than 10 years.

3rd Degree - Imprisonment for not more than 10 years.

D.
Offenses Against the Peace

CONSPIRACY AGAINST CIVIL RIGHTS

Class F Felony

Code §16-5-10
CDR Code 269

Elements Of The Offense:

- That the accused did, with two or more persons, band or conspire with them to go
1. in disguise upon the public highway, or upon the premises of another with the intent to:
 2. (a) Injure, oppress or violate the person or the property of another because of his political opinion,

OR

(b) Prevent or obstruct a citizen in the free exercise and enjoyment of a right and privilege secured to him by the U. S. Constitution or by the State Constitution.

Note:

An indictment for this offense does not abrogate the law of conspiracy (§16-17-410) and has no reference to conspiracy to commit common law offenses.

Penalty:

Fine of not more than \$2,000 or imprisonment for not more than 5 years, or both. In addition, a person convicted under this subsection is ineligible to hold any office of honor, trust, or profit in this State.

DESTROYING RECORDS IN PUBLIC BUILDING

Class A Misdemeanor

Code §16-7-170
CDR Code 274

Elements Of The Offense:

- A. 1. That the accused did enter into a private or public school, college or university building, or any public building.
2. That the purpose for entering said building was to destroy records or other property therein.

OR

3. That the accused, after so entering, did in fact destroy or damage the records or other property thereof.

Penalty:

A fine not to exceed \$5,000, or imprisonment for not more than 3 years.

FAILURE TO STOP FOR LAW ENFORCEMENT VEHICLE

Class A Misdemeanor, Felony

Code §56-5-750
CDR Codes 65, 2396-2398

Elements Of The Offense:

1. That the accused drove on a road, street, or highway of this State.
2. That the accused failed to stop when signaled by any law enforcement vehicle by means of a siren or flashing light, and
3. That there were no mitigating circumstances.

Note:

An attempt to increase the speed of a vehicle or in other manner avoid the pursuing law enforcement vehicle when signaled is prima facie evidence of a violation of this section. Failure to see the flashing light or hear the siren does not excuse the failure to stop

Penalty:

First offense where no great bodily injury or death resulted - Fine of not less than \$500 or imprisonment for not less than 90 days nor more than 3 years. The person's driver's license must be suspended for at least 30 days.

Second or subsequent offense where no great bodily injury or death resulted - Imprisonment for not more than 5 years. The person's driver's license must be revoked for a period of 1 year from the date of the conviction.

Where great bodily injury resulted - Imprisonment for not more than 10 years.

Where death resulted - Imprisonment for not more than 25 years.

The department must revoke the driver's license of any person who is convicted, where death or great bodily injury occurs for a period to include any term of imprisonment, suspended sentence, parole, or probation, plus 3 years.

HINDERING OFFICERS, RESCUING PRISONERS

Class C Misdemeanor

Code § 16-5-50
CDR Code 92

Elements Of The Offense:

That the accused did hinder, prevent or obstruct an officer or person charged with

1. the execution of a warrant.

OR

2. That the accused did rescue or attempt to rescue a person from the custody of an officer or persons lawfully assisting him.

OR

3. That the accused did aid, abet or assist a person arrested to escape from the custody of the arresting officer.

OR

4. That the accused did harbor or conceal a person for whom an arrest warrant had been issued so as to prevent his discovery and arrest, having had notice that such warrant or process had been issued.

Note:

See §24-13-420 as to harboring or employing escaped convicts.

Penalty:

Fine of not less than \$50 nor more than \$1,000 or imprisonment for not less than 3 months nor more than 1 year, or both.

RIOT

Class F Felony or Class B Misdemeanor

Code §16-5-130
CDR Codes 2366, 641, 711

Elements Of The Offense:

1. That the accused did riot, or did participate by instigating, promoting or aiding the same, whether personally present or not.

Note:

This section does not seek to prevent the peaceable assembling of persons for lawful purposes of protest or petition. A "riot" is a tumultuous disturbance of the peace by three or more persons acting together in the execution of some enterprise, lawful or unlawful, in such a violent and unauthorized manner as to create likelihood of public terror and alarm. (See §16-5-120).

Penalty:

If the purpose of the riot was to resist the enforcement of a State or Federal statute, or to obstruct a public officer in executing a mandate of a court, or if the offender carries a

dangerous weapon, or is disguised, the penalty is imprisonment for not more than 5 years or a fine of not more than \$1,000, or both.

If the accused directed, advised, encouraged, or solicited other persons participating in the riot to acts of force or violence, the penalty is imprisonment for not more than 2 years or a fine of not more than \$500, or both.

In any other situation not mentioned above, the penalty is imprisonment for not more than 2 years or a fine of \$250, or both.

RIOT, ROUT, OR AFFRAY

Misdemeanor

Code §16-5-120
CDR Code 1155

Elements Of The Offense:

1. That the accused did engage in a riot, rout or affray.
2. That no weapon was used and no wound was inflicted.

Note:

A "rout" is the movement of unlawful assemblies on the way to carry out their common design; an attempt to commit an act which would be a "riot" if actually committed. An "affray" is a fight in a public place to the terror and alarm of the people. §16-5-130, a companion statute, covers more serious "riot" situations, and consequently, carries more severe penalties.

Penalty:

Fine of \$100 or imprisonment for not more than 30 days.

SLANDER - LIBEL

Class C Misdemeanor

Code §16-7-150
CDR Code 146

Elements Of The Offense:

1. That the accused did originate, utter, publish or circulate a false statement or matter.
2. That the accused did so with malicious intent.
3. That the statement or matter shall tend to injure the character or reputation of the person about whom it was published or uttered.

Note:

The criminal action in no way abridges the right of the person injured to have a civil action

for damages for libel or slander.

Penalty:

Fine of not more than \$5,000 or imprisonment for not more than 1 year, or both.

STINK BOMBS

Class E Felony or Class A Misdemeanor

Code §16-7-160
CDR Codes 334, 414

Elements Of The Offense:

1. That the accused did throw, place, or deposit any stink bomb, tear gas bomb, or similar device which did contain foul or offensive odors, may inflict injury, or caused fear sufficient to incite a riot in or in close proximity to any public building, storehouse, theater, stadium, arena, private residence, boardinghouse, or other place where people lodge.

Note:

An officer engaged in his duties can not be charged under this section.

Penalty:

If serious bodily harm or injury does not occur, a fine of not more than \$3,000 or imprisonment for not more than 3 years, or both.

If serious bodily harm or injury occurs, a fine of not more than \$10,000 or imprisonment for not more than 10 years, or both. The court may order all or a portion of a fine to be paid to persons injured as a result of the violation to recover necessary medical expenses.

Violations of Emergency Proclamation

ILLEGAL ACTS DURING STATE OF EMERGENCY

Misdemeanor and Class E Felony

Code §16-7-10
CDR Codes 1156, 50

Elements Of The Offense:

- A. 1. That the Governor did proclaim a state of emergency to exist in a given area.
2. That during the proclamation, it is unlawful for a person to:
 - a. violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation
 - b. congregate, unless authorized or in their homes, in groups of three or more and refuse to disperse at the order of an authorized official, or
 - c. willfully fail to comply with any order of any law-enforcement officer,

OR

- B. 1. That the Governor did proclaim a state of emergency to exist in a given area.
2. That the accused did enter into the property of another, without lawful authority and with criminal intent to damage the property of another, or to take possession or otherwise disturb the property. (Looting)

OR

- C. 1. That the Governor did proclaim a state emergency in a given area.
2. That the accused charged unconscionable prices, or knowingly and willfully use a misleading practice or device to solicit the contribution or sale of goods or services for charitable purposes in connection with a declared state or emergency or disaster.

Penalty:

For violating "A" above - fine of not more than \$100 or imprisonment for not more than 30 days, or both.

For violating "B" above - fine or imprisonment, or both, at the discretion of the court. The Court must order restitution pursuant to §17-25-322.

For violating "C" above - fine of not more than \$1000 or imprisonment for not more than 30 days. [§§39-5-145 and 39-5-147].

WEARING MASKS - EXEMPTIONS

Class C Misdemeanor

Code §§16-7-110 and 16-7-130
CDR Code 317

Elements Of The Offense:

1. That the accused was over 16 years of age.
2. (a) That he did appear upon a lane, walk, alley, street, road, or highway or on public property while wearing a mask which concealed his identity.

OR

(b) That he did appear or participate in any meeting or demonstration upon private property of another while wearing a mask and that he did so without the permission of the owner.

Note:

Section 16-7-130 exempts the following:

1. Persons wearing holiday costumes.
2. Persons wearing masks in trade for physical safety.

3. Persons in theatrical productions or masquerade balls.
4. Persons engaged in civil defense drills or in emergencies.

Penalty:

Fine of not more than \$500 or imprisonment for not more than 1 year. (§16-7-140)

ACCESSORY BEFORE THE FACT

Felony

Code §16-1-40
CDR Code 2

Elements Of The Offense:

1. That the accused counseled, hired, or otherwise procured a felony.
2. That the person accused was not present when the offense was committed.
3. That the principal committed the crime.

Note:

The presence or absence of the accused at the commission of the crime is determinative of his status as an accessory before the fact or a principal in the second degree. If one was present at the commission of the crime either actively or constructively, he is a principal: if one was not present at the commission of the offense, he is chargeable under this section, but punishable as a principal. (See §16-1-50, Indictment and Conviction of Accessories).

Penalty:

The same penalty as the principal would receive.

**E.
Offenses Against the Person**

ACCESSORY BEFORE THE FACT

Felony

Code §16-1-40
CDR Code 2

Elements Of The Offense:

1. That the accused counseled, hired, or otherwise procured a felony.
2. That the person accused was not present when the offense was committed.
3. That the principal committed the crime.

Note:

The presence or absence of the accused at the commission of the crime is determinative of his status as an accessory before the fact or a principal in the second degree. If one was present at the commission of the crime either actively or constructively, he is a principal: if one was not present at the commission of the offense, he is chargeable under this section, but punishable as a principal. (See §16-1-50, Indictment and Conviction of Accessories).

Penalty:

The same penalty as the principal would receive.

ADMINISTERING OR ATTEMPTING TO ADMINISTER POISON

Class C Felony

Code §16-3-70
CDR Code 322

Elements Of The Offense:

It is unlawful to:

1. maliciously administer to, attempt to administer to, aid or assist in administering to, or cause to be taken by, another person a poison or other destructive things, with intent to kill that person,

OR

2. counsel, aid, or abet a person under in the administering or poison to another.

Note:

§16-3-30 covers the "successful" poisoning of another resulting in death. This section deals with the administration of or attempt to administer poison to one with the intent of causing death. There must be proof of ingestion by victim of any poison or other

destructive substance as well as the malicious intent of the actor.

The fact that the substance is given in insufficient quantity to do its work is of no effect. However, the administration of a substance believed to have deadly or destructive properties which it does not in fact so possess, would be assault and battery with the intent to kill. (§16-3-620).

Penalty:

Imprisonment of not more than 20 years.

"SIMPLE" ASSAULT AND BATTERY

Misdemeanor

Code §22-3-560
CDR Code 612

Elements Of The Offense:

ASSAULT

1. That the accused offered or attempted to do bodily harm to the person of another, other than a person affiliated with a school in an official capacity as included in Section 16-3-612(B), with the apparent ability presently to inflict the harm offered or attempted.

BATTERY

2. That the accused committed a nonconsenting touching to the person of another, other than a person affiliated with a school in an official capacity as included in Section 16-3-612(B), causing injury to that person.

Penalty:

Fine of not more than \$500 or imprisonment of not more than 30 days, or both.

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE (ABHAN)

Unclassified Misdemeanor

Code §17-25-30
CDR Code 13

Elements Of The Offense:
Common Law Offense

1. That the accused committed an assault and battery, and
2. That one of the following aggravating circumstances did exist:
 - a. A deadly weapon was used.
 - b. Serious bodily injury occurred.
 - c. The intent to commit a felony.

- d. A great disparity in age and physical condition of the parties.
- e. A difference in the sexes.
- f. Indecent liberties or familiarities with a female (by a male).
- g. Purposeful infliction of shame and disgrace.
- h. Resistance to lawful authority.

Penalty:

3 months to 10 years imprisonment.

ASSAULT AND BATTERY ON SCHOOL PERSONNEL

Class C Misdemeanor

Code § 16-3-612
CDR Codes 2544

Elements Of The Offense:

1. That the accused student committed a non-aggravated assault and battery on school grounds or at a school sponsored event against any school personnel.

Note:

"School" includes, but is not limited to, a public or private school that contains any grades of kindergarten through twelfth grade, public or private colleges, universities, and any vocational, technical, or occupational school.

Penalty:

Fine of not more than \$1,000, or imprisonment for not more than 1 year, or both.

ASSAULT AND BATTERY WITH INTENT TO KILL (ABIK)

Class C Felony

Code §16-3-620
CDR Code 14

Elements Of The Offense:

1. an unlawful act;
2. of a violent nature;
3. to the person of another;
4. with malice aforethought, either express or implied.

State v. Burton, 356 S.C. 259, 589 S.E.2d 6 (2003)

Note:

The intent to kill can be established from the factual circumstances surrounding the crime. The key question is whether it could be reasonably inferred that the defendant intended to kill the victim.

Penalty:

20 years imprisonment.

**ASSAULT OF HOME HEALTHCARE WORKER, FIREFIGHTER
OR EMERGENCY MEDICAL SERVICE PROVIDER**

Felony or Misdemeanor

Code §16-3-635
CDR Codes 2528, 2529

Elements Of The Offense:

1. That the accused knowingly or willfully resists or obstructs a home healthcare worker, firefighter or EMS provider, or commits an assault on a home healthcare worker, firefighter or EMS provider in the lawful discharge of that person's official duties. [§16-3-635(B)].

OR

2. That the accused knowingly or willfully resists or obstructs a home healthcare worker, firefighter or EMS provider, or commits an assault on a home healthcare worker, firefighter or EMS provider in the lawful discharge of that person's official duties and the resistance, obstruction, or assault is accompanied by at least one circumstance of aggravation. [§16-3-635(C)].

Note:

Circumstances of aggravation include 1) physical injury, 2) use of a deadly weapon, 3) great disparity in the physical condition of the parties, 4) great disparity in the ages of the parties, 5) great disparity in the sizes of the parties, 6) indecent liberties with a female.

Penalty:

A person in violation of §16-3-635(B) is guilty of the misdemeanor of assault and battery upon a home healthcare worker, firefighter or EMS provider and must be fined not more than \$1,000 or imprisoned not less than 2 months nor more than 3 years, or both.

A person in violation of §16-3-635(C) is guilty of the felony of assault and battery of a high and aggravated nature upon a home healthcare worker, firefighter or EMS provider and must be fined not less than \$1,000 nor more than \$10,000 or imprisoned not less than 1 year nor more than 10 years, or both.

**ASSAULT OR INTIMIDATION ON ACCOUNT OF
POLITICAL OPINIONS OR EXERCISE OF CIVIL RIGHTS**

Class B Misdemeanor

Code § 16-17-560
CDR Code 252

Elements Of The Offense:

1. (a) That the accused did assault or intimidate a citizen because of his political opinions or his exercise of political rights and privileges,

OR

2. (b) That the accused, for such reason, did discharge the citizen from employment, or eject him from rented property.

Penalty:

Fine of not more than \$1,000 or imprisonment for not more than two years, or both.

THREATENING LIFE, PERSON, OR FAMILY OF PUBLIC OFFICIAL

Class F Felony

Code §16-3-1040
CDR Codes 541, 2605

Elements Of The Offense:

1. That the accused knowingly and willfully:
 - a. delivered or conveyed,
 - b. to a public official or to a teacher or principal of an elementary or secondary school, or to a public employee,
 - c. any letter or paper, writing, print, missive, document, or electronic communication, or any verbal or electronic communication,
 - d. which contained any threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal, or public employee, or member of their immediate families.

Note:

"Public official" means any elected or appointed official. This includes police officers.

"Public employee" means any person employed by the State, a county, a municipality, a school district (except for a teacher or principal of an elementary or secondary school), or a political subdivision of this State.

"Immediate family" means the spouse, child, grandchild, mother, father, sister, or brother of the public official, teacher, principal, or public employee.

Penalty:

For violation of subsection (A), fine of not more than \$5,000 or imprisonment of not more than 5 years, or both.

For violation of subsection (B) [public employee], fine of not more than \$500 or imprisonment of not more than 30 days, or both.

ASSAULT WITH CONCEALED WEAPON

Elements Of The Offense:

1. That the accused did commit an assault, or assault and battery, or assault and battery with intent to kill or manslaughter, upon another person, and
2. That the assault, or assault and battery, or assault and battery with intent to kill, or manslaughter, was committed with a deadly weapon (as specified in §16-23-460) carried concealed upon his person.

Note:

A prerequisite for conviction of this offense is of course a charge and conviction under §16-23-460 dealing with carrying concealed weapons. Indictment must contain a special count of carrying concealed weapon and a special jury verdict is required. (§17-19-40).

Penalty:

In addition to the punishment for the assault of whatever degree; imprisonment for not less than 3 months nor more than 12 months, or a fine of not less than \$200.00, or both at the discretion of the judge.

CHILD ENDANGERMENT IN MOTOR VEHICLE

Elements Of The Offense:

1. That the accused was eighteen years of age or over.
2. That the accused was in violation of §56-5-750 (Failure to Stop for Blue Light), §56-5-2930 (DUI) or §56-5-2945 (Felony DUI), and
3. That the accused had one or more passengers under sixteen years of age in the motor vehicle when the violation occurred.

Note:

If more than one passenger under sixteen was in the vehicle, the accused may be charged with only one violation of this section.

A person may be convicted of this offense in addition to being convicted of Failure to Stop when Signaled by Law Enforcement Vehicle, DUI or Felony DUI.

Penalty:

Fine of not more than one half of the maximum fine allowed for committing either Failure to Stop, DUI or Felony DUI, when the person is fined for that offense, or imprisonment of not more than one half of the maximum term of imprisonment allowed for committing Failure to Stop, DUI or Felony DUI when the person is imprisoned for that offense, or both.

The person's driver's license must be suspended for 60 days.

CONSPIRACY TO KIDNAP

Class A Felony

Code §16-3-920
CDR Codes 17, 949

Elements Of The Offense:

1. That the accused did enter into an agreement, confederation or conspiracy with one or more persons, and
2. That the agreement was to violate §16-3-910, to kidnap another person, and
3. That one of those making the agreement did an overt act towards carrying out the agreement.

Note:

The definition of "conspiracy" is found in §16-17-410, and should be used in connection with this section.

Penalty:

Punishable by a term of imprisonment not to exceed 30 years unless sentenced for murder as provided in §16-3-20.

EMPLOYING PERSON UNDER 18 TO COMMIT CERTAIN CRIMES

Class D Felony

Code §16-3-1045
CDR Codes 2443, 2444

Elements Of The Offense:

- A. 1. That the accused used, solicited, directed, hired, persuaded, induced, enticed, coerced, or employed a person under 18 years of age to commit:
- a. a violent crime
 - b. the crime of lynching as a result of mob violence
 - c. the unlawful distribution of cocaine, crack cocaine, heroin, marijuana, or LSD

OR

2. That the accused conspired to use, solicit, direct, hire, persuade, induce, entice, coerce, or employ a person under 18 years of age to commit:
- a. a violent crime
 - b. the crime of lynching as a result of mob violence
 - c. the unlawful distribution of cocaine, crack cocaine, heroin, marijuana, or LSD

Penalty:

Imprisonment for not less than 5 years nor more than 15 years.

FAILURE TO REMOVE DOORS FROM CONTAINERS

Unclassified Misdemeanor

Code §16-3-1010
CDR Code 626

Elements Of The Offense:

- A. 1. That the accused did abandon an icebox, refrigerator, ice chest, or other type of airtight container of such capacity to hold any child.
2. That the accused did neglect, prior to the abandonment, to remove the door, lid, or other device for closing thereof.

OR

- B. That the accused did allow such an item to be abandoned upon his property and there remain without the removing of the door, lid, or other device for closing thereof.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days.

HOMICIDE BY CHILD ABUSE

Class C or Exempt Felony

Code §16-3-85
CDR Code 2356, 2357

Elements Of The Offense:

1. That the accused caused the death of a child under the age of eleven while committing child abuse or neglect and the death occurs under circumstances manifesting an extreme indifference to human life;

OR

2. That the accused did knowingly aid and abet another person to commit homicide by child abuse.

Penalty:

For violating "1" above - imprisonment for life but not less than 20 years.

For violating "2" above - imprisonment not to exceed 20 years nor less than 10 years.

In sentencing a person under this section, the judge must consider any aggravating circumstances including, but not limited to, a defendant's past pattern of child abuse or neglect of a child under the age of eleven, and any mitigating circumstances; however, a child's crying does not constitute provocation so as to be considered a mitigating circumstance.

KIDNAPPING

Class A Felony

Code §16-3-910
CDR Codes 95, 948

Elements Of The Offense:

1. That the accused did unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away another person, and
2. That the act was committed without authority of law.

Note:

A minor who is seized or taken by a parent is not within this section, but such parent or anyone who defies a custody order and transports a child from the legal custodial to conceal the child has committed a felony. §16-17-495.

Penalty:

Punishable by a term of imprisonment not to exceed 30 years unless sentenced for murder as provided in §16-3-20.

KILLING BY POISON

Exempt Felony

Code §16-3-30
CDR Code 35

Elements Of The Offense:

1. That the accused did take the life of another person, and
2. That the killing was committed with malice aforethought, and
3. That the method used was poisoning.

Note:

See §16-3-70 for "attempted poisoning".

Penalty:

Punishable by death or life imprisonment as determined pursuant to §16-3-20.

LYNCHING - FIRST DEGREE

Exempt Felony

Code §16-3-210
CDR Code 312

Elements Of The Offense:

1. That a person's death resulted from the violence inflicted upon him by a mob, and

2. That the accused was a member of that mob.

Note:

A mob is defined in §16-3-230 as an assemblage of two or more persons, without color of law, gathered together for the premeditated purpose of committing violence upon another. This section is distinguished from the following section on second degree lynching by the requisite element of the death of an individual who was the object of the violence of the mob, where §16-3-220 required only "any act of violence". (See also §§16-3-240 through 270).

Penalty:

Death, unless the jury shall recommend the defendant to the mercy of the court, in which event the defendant shall be confined for a term not exceeding 40 years nor less than 5 years at the discretion of the presiding judge.

LYNCHING - SECOND DEGREE

Class C Felony

Code §16-3-220
CDR Code 313

Elements Of The Offense:

1. That the mob did commit violence upon the body of another person, and
2. That the accused did participate as a member of said mob so engaged.

Note:

See §16-3-240 for treatment of all members of mob present at time violence committed considered to be aiders and abettors and guilty as principals.

Penalty:

Imprisonment for not less than 3 years nor more than 20 years.

VOLUNTARY MANSLAUGHTER

Class A Felony

Code §16-3-50
CDR Code 217

Elements of the Offense:

1. That the accused unlawfully killed another person.
2. That the killing took place without malice, express or implied.

Note:

Voluntary manslaughter is distinguished from murder by the absence of malice

aforethought. "Malice" is defined in Black's Law Dictionary as "the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent." For a killing to be manslaughter rather than murder, it is essential to have adequate legal provocation which produces an uncontrollable impulse to do violence. The test of adequate provocation is whether a reasonable man would have acted similarly under the circumstances. Killing with a deadly weapon creates a presumption of malice. In which case, the proper charge would be murder until such a presumption is rebutted. Manslaughter may be reduced to involuntary manslaughter by a verdict of the jury.

Penalty:

Imprisonment for not more than 30 years or less than 2 years.

INVOLUNTARY MANSLAUGHTER

Class F Felony

Code §16-3-60
CDR Code 218

Elements Of The Offense:

1. That the accused unlawfully killed another person.
2. That the killing was without malice aforethought.
3. That the killing was unintentional, and
4. The killing resulted from criminal negligence.

Note:

Criminal Negligence is defined as the "reckless disregard of the safety of others." The absence of an intent to kill or to inflict bodily harm distinguishes involuntary manslaughter from voluntary manslaughter

§56-5-2910 pertains to reckless homicide from the operation of a motor vehicle. This section does not supersede the common-law offense of involuntary manslaughter.

Penalty:

Imprisonment for not more than 5 years.

MURDER

Exempt Felony

Code §16-3-10
CDR Code 116

Elements Of The Offense:

1. That the accused unlawfully killed another, and
2. That the killing was committed with malice aforethought.

Note:

Malice aforethought is the willful doing of an illegal act without just cause and with a previously formed intention to commit such act. A killing may be with malice aforethought although it is conceived and executed at the same time.

Malice aforethought may be inferred from reckless disregard of human life.

If malice aforethought is committed in the execution of an unlawful act, all participants are guilty.

Penalty:

Death, by imprisonment for life, or by a mandatory minimum term of imprisonment for 30 years. §16-3-20.

RECKLESS HOMICIDE

Class E Felony

Code §56-5-2910
CDR Code 135

Elements Of The Offense:

1. That the accused unlawfully killed another person. Death of the victim must occur within 3 years of injury and be caused by operation of a motor vehicle in reckless disregard of the safety of others, and
2. That the accused did operate a motor vehicle in reckless disregard of the safety of others.

Note:

Refer to §50-21-115 for reckless homicide by operation of a boat.

Penalty:

Fine of not less than \$1,000 nor more than \$5,000, or imprisonment of not more than 10 years, or both. The Department shall revoke for 5 years the driver's license of a person convicted of this offense. See §56-5-2910(B) for reinstatement procedures after 1 year from date of revocation.

FELONY DUI

Class D or B Felony

Code §56-5-2945
CDR Codes 406, 395

Elements Of The Offense

1. That the accused drove a vehicle while under the influence of alcohol and/or drugs.
2. That the accused did an act forbidden by law or neglected a duty imposed by law, and
3. The act or neglect proximately caused great bodily injury or death to another

person.

Note:

Great bodily injury means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss of impairment of the function of any bodily member or organ.

§56-5-2945 does not expressly repeal the existing offenses of involuntary manslaughter and reckless homicide, and construction of the statute indicates that repeal by implication is not intended. State v. Bodiford, 282 S.C. 378, 318 S.E.2d 567 (1984)

Penalty:

When great bodily injury results: fine of not less than \$5,100 nor more than \$10,100 and mandatory imprisonment for not less than 30 days nor more than 15 years.

When death results: fine of not less than \$10,100 nor more than \$25,100 and mandatory imprisonment for not less than 1 year nor more than 25 years.

The department shall suspend the driver's license of any person who is convicted of, pleads guilty or nolo contendere to this offense for any jail term plus 3 years.

UNLAWFUL CONDUCT TOWARDS CHILD

Class E Felony

Code § 20-7-50
CDR Code 2481

Elements Of The Offense:

1. That the accused, who is the parent or guardian, did have charge or custody of a child.
2. That the accused did place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety; or did or caused to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child was endangered or is likely to be endangered; or
3. That the accused did willfully abandon the child.

Penalty:

Fine in the discretion of the court or imprisonment of not more than 10 years, or both.

CRIMINAL DOMESTIC VIOLENCE

Misdemeanor and Felony

Code §16-25-20
CDR Codes 2671,2672, 685

Prior to January 1, 2006

Elements Of The Offense

1. That the accused caused physical harm or injury to their own household member (spouse, former spouse, persons who have a child in common, and persons who are cohabiting or formerly have cohabited).

OR

2. a. That the accused offered or attempted to cause physical harm or injury to their household member, and,
b. That the accused has apparent present ability to cause physical harm or injury under circumstances reasonably creating fear of imminent peril.

Penalty:

First Offense: fine of not more than \$500 or imprisonment not to exceed 30 days. The court may suspend the imposition or execution of all or part of the sentence conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers.

Second Offense: fine of not more than \$500 and imprisonment not to exceed 30 days. The court may suspend the imposition or execution of all or part of the sentence conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers.

Third or Subsequent Offenses: Not less than 90 days but not more than three years imprisonment. The Court may suspend the imposition or execution of all or part of the sentence, except the MANDATORY NINETY-DAY MINIMUM SENTENCE, and place the offender on probation conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers.

Note:

No person found guilty of a violation of §16-25-20(A) and §16-25-20(E) {Orders of Protection} may be sentenced under both sections for the same offense.

****Effective January 1, 2006****

Elements Of The Offense

1. That the accused caused physical harm or injury to their own household member (spouse, former spouse, persons who have a child in common, and persons who are cohabiting or formerly have cohabited).

OR

2. That the accused offered or attempted to cause physical harm or injury to their own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

Penalty:

First Offense: fine of not less than \$1000 nor more than \$2500 or imprisonment not to exceed 30 days. The court may suspend the imposition or execution of all or part of the sentence, conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers. This offense must be tried in summary court.

Second Offense: fine of not less than \$2500 nor more than \$5000 and imprisonment not less than a mandatory minimum of 30 days or more than 1 year. The court may suspend the imposition or execution of all or part of the sentence, except the 30 day mandatory minimum sentence, conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers. An individual is subject to this section when the accused has a prior CDV or CDVHAN offense within the previous 10 years.

Third or Subsequent Offenses: Not less than the mandatory minimum of 1 year but not more than 5 years. The Court may suspend the imposition or execution of all or part of the sentence, except the 1 year mandatory minimum sentence, and place the offender on probation conditioned upon certain factors. This offense is classified as a Felony. An individual is subject to this section when the accused has two violations of CDV or CDVHAN within the previous 10 years.

NOTE:

An offender who participates in a batterer treatment program pursuant to this section, must participate in a program offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services. The offender must pay a reasonable fee for participation in the treatment program but no person may be denied treatment due to inability to pay. If the offender suffers from a substance abuse problem, the judge may order, or the batterer treatment program may refer, the offender to supplemental treatment coordinated through the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to §61-12-20. The offender must pay a reasonable fee for participation in the substance abuse treatment program, but no person may be denied treatment due to inability to pay. See §16-25-20 (I).

**VIOLATION OF TERMS AND CONDITIONS OF AN
ORDER OF PROTECTION**

Misdemeanor

Code §16-25-20 (E)
CDR Code 1247

****Prior to January 1, 2006****

Elements Of The Offense:

1. Violation of the terms and conditions of an order of protection issued under the "Protection from Domestic Abuse Act" or a valid protection order issued by another State, tribe, or territory.

Note:

No person found guilty of a violation of §16-25-20 and §16-25-50 may be sentenced under both sections for the same offense.

Penalty:

Fine of not more than \$500 or imprisonment not to exceed 30 days.

****Effective January 1, 2006****

Elements of the Offense:

1. Violation of the terms and conditions of an order of protection issued under the "Protection from Domestic Abuse Act" or a valid protection order issued by another State, tribe, or territory.

Note:

Effective January 1, 2006, a person found guilty of a violation of §16-25-20(A) [Criminal Domestic Violence] and §16-25-20(E) may be sentenced under both sections for the same offense.

Penalty:

Fine of not more than \$500 AND imprisonment not to exceed 30 days. The Court may not suspend any part of this sentence.

STALKING AND HARASSMENT

Misdemeanor and Felony

Code §§16-3-1700 -16-3-1730
CDR Codes 2401-2408, 3049-3051

****Prior to January 1, 2006****

Elements Of The Offense:

HARASSMENT

- A. 1. That the accused used a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person.
2. That the accused caused the person (and would have caused a reasonable person) to suffer mental distress.
- B. 1. Harassment includes, but is not limited to
 - a. Following the person as he moves from location to location.
 - b. Visual, physical, or verbal, written, or electronic contact that is initiated, maintained, or repeated after a person has been provided notice that the contact is unwarranted,
 - c. Surveillance of or the maintenance of a presence near the person's
 - i. residence
 - ii. place of work
 - iii. school, or
 - iv. another place regularly occupied by the person.
 - d. Vandalism and property damage.

Note:

Harassment does not include words or conduct that is protected by the Constitutions of South Carolina or the United States, and does not apply to law enforcement officers or process servers performing their official duties.

STALKING

1. That the accused used a pattern of words, conduct, written, or electronic.
2. That the accused intended to cause and did cause a person (and would have caused a reasonable person) to fear:
 - a. Death of the person or a member of his family,
 - b. Assault upon the person or a member of his family,
 - c. Bodily injury to the person or a member of his family;
 - d. Criminal sexual conduct on the person or a member of his family,
 - e. Kidnapping of the person or a member of his family, or
 - f. Damage to the property of the person or a member of his family.

Note:

Stalking does not include words or conduct that is protected by the Constitutions of South Carolina or the United States, and does not apply to law enforcement officers or process servers performing their official duties.

"Pattern" means two or more acts within a ninety day period.

"Family" means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.

PENALTIES

I. Harassment

Fine of not more than \$200 or imprisonment for not more than 30 days, or both. (§16-3-1710).

Second or subsequent offense within 7 years of a previous conviction against the same victim, or if there is a temporary restraining order or an injunction, or both in effect prohibiting the behavior- Fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

II. Stalking

Fine of not more than \$1,000 or imprisonment for not more than 1 year, or both. (§16-3-1720).

If there is a temporary restraining order or an injunction, or both in effect prohibiting the behavior - Fine of not more than \$2,000 or imprisonment for not more than 2 years, or

both.

Second or subsequent offense within 7 years of a previous conviction of harassment or stalking against the same victim - Fine of not more than \$5,000 or imprisonment for not more than 5 years, or both.

Note: In addition to the penalties provided in sections 16-3-1710 and 16-3-1720, a person convicted of harassment or stalking who received licensing or registration information pursuant to Article 4 of Chapter 3 of Title 56 (Release of Licensing and Registration Information) and used the information to further the commission of the offenses under these sections must have the following penalties imposed:

Harassment - Fine of \$200 or imprisonment of 30 days, or both.

Stalking - Fine of \$1,000 or imprisonment of 1 year, or both.

III. Aggravated Stalking

Felony--Fine of not more than \$5,000 or imprisonment for not more than 5 years, or both. (§16-3-1730).

If there is a temporary restraining order or an injunction, or both in effect prohibiting the behavior -- Fine of not more than \$7,000 or imprisonment for not more than 10 years, or both.

Second or subsequent offense within 7 years of a previous conviction of harassment or stalking against the same victim -- Fine of not more than \$10,000 or imprisonment for not more than 15 years, or both.

Note: Magistrate's shall have jurisdiction over an action seeking a restraining order against a person engaged in harassment or stalking. Section 16-3-1750.

****Effective January 1, 2006****

HARASSMENT, 1ST DEGREE

Elements Of The Offense:

- A. 1. That the accused used a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose.
2. The accused caused the person (and would have caused a reasonable person) to suffer mental or emotional distress.
3. Harassment, 1st degree may include, but is not limited to:
 - a. Following the person as he moves from location to location;
 - b. Visual or physical contact that is initiated, maintained, or repeated after a person has been provided oral or written notice that the contact is unwarranted or after the victim has filed an incident report with a law enforcement agency;
 - c. Surveillance of or the maintenance of a presence near the person's:

- i. residence
 - ii. place of work
 - iii. school, or
 - iv. another place regularly occupied or visited by the person; and
- d. Vandalism and property damage.

Penalty:

§16-3-1720 (A): Fine of not more than \$1000, imprisonment for not more than 3 years, or both. (Misdemeanor)

§16-3-1720 (B): Fine of not more than \$2000, imprisonment not more than 3 years, or both. Subject falls under this subsection when an injunction or restraining order is in effect prohibiting this conduct. (Misdemeanor)

§16-3-1720 (C): Fine of not more than \$5,000, imprisonment for not more than 5 years, or both. Subject falls under this subsection when the person has a prior conviction of harassment or stalking within the preceding 10 years. (Felony)

In addition to the above penalties, a person convicted of Harassment, 1st Degree who received licensing or registration information pursuant to Article 4 of Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense under this section must be fine \$1000 or imprisoned 1 year, or both.

HARASSMENT, 2ND DEGREE

Elements Of The Offense:

1. The accused used a pattern of intentional, substantial, and unreasonable intrusion into the private life of a targeted person that serves no legitimate purpose.
2. The accused causes the person (and would cause a reasonable person) to suffer mental or emotional distress.
3. Harassment, 2nd degree may include, but is not limited to, verbal, written, or electronic contact that is initiated, maintained, or repeated.

Penalty:

§16-3-1710 (A): Fine of not more than \$200, imprisonment for not more than 30 days , or both. (Misdemeanor)

§16-3-1710 (B): Fine of not more than \$1000, imprisonment not more than 1 year, or both. Subject falls under this subsection if 1) the person has a prior conviction of harassment or stalking within the preceding 10 years or 2) at the time of the harassment an injunction or restraining order was in effect prohibiting the harassment. (Misdemeanor)

In addition to the above penalties, a person convicted of Harassment, 2nd Degree who received licensing or registration information pursuant to Article 4 of Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense under this section must be fine \$200 or imprisoned thirty days, or both.

STALKING

Elements Of The Offense:

1. That the accused used a pattern of words whether verbal, written, or electronic or a pattern of conduct that serves no legitimate purpose.
2. That the accused intended to cause and did cause a person (and would have caused a reasonable person) to fear:
 - a. Death of the person or a member of his family,
 - b. Assault upon the person or a member of his family,
 - c. Bodily injury to the person or a member of his family,
 - d. Criminal sexual conduct on the person or a member of his family,
 - e. Kidnapping of the person or a member of his family, or
 - f. Damage to the property of the person or a member of his family

Note:

"Pattern" means two or more acts occurring over a period of time; however short, evidencing continuity of purpose.

"Family" means a spouse, child, parent, sibling, or a person who regularly resides in the same household as the targeted person.

"Electronic contact" contact means any transfer of sign, signals, writing, images, sounds, data, intelligence, or information of any nature transmitted in whole or in part by any device, system, or mechanism, including, but not limited to, a wire, radio, computer, electromagnetic, photoelectric, or photo-optical system.

This section does not apply to the words or conduct protected by the Constitution of this State or the United States, a law enforcement officer or a process server performing official duties, or a licensed private investigator performing services or an investigation as described in detail in a contract signed by the client and the private investigator.

Penalty:

§16-3-1730 (A): Fine of not more than \$5000, imprisonment for not more than 5 years, or both. (Felony)

§16-3-1730 (B): Fine of not more than \$7000, imprisonment not more than 10 years, or both. Subject falls under this subsection when an injunction or restraining order is in effect prohibiting this conduct. (Felony)

§16-3-1730 (C): Fine of not more than \$10,000, imprisonment for not more than 15 years, or both. Subject falls under this subsection when the person has a prior conviction of harassment or stalking within the preceding 10 years. (Felony)

In addition to the above penalties, a person convicted of Stalking who received licensing or registration information pursuant to Article 4 of Chapter 3 of Title 56 and used the information in furtherance of the commission of the offense under this section must be fine \$1000 or imprisoned 1 year, or both.

F.
Offenses Against Property

ALTERING LANDMARKS

Misdemeanor

Code §16-11-680
CDR Code 633

Elements Of The Offense:

1. That the accused did knowingly, willfully, maliciously or fraudulently cut, fell, alter or remove any certain boundary tree or other landmark.

Penalty:

Fine of no more than \$100 or imprisonment not to exceed 30 days.

ARSON - FIRST DEGREE

Class A Felony

Code §16-11-110(A)
CDR Code 2550

Elements Of The Offense:

1. That the accused willfully and maliciously caused an explosion, set fire to, burned, aided, counseled or procured the burning that resulted in damage to a building or structure, and or caused to be burned a building or structure whether the property of himself or another, which results, either directly or indirectly, in death or serious bodily injury to a person.

Penalty:

Imprisonment for not less than 10 years nor more than 30 years.

ARSON - SECOND DEGREE

Class C Felony

Code §16-11-110(B)
CDR Code 2551

Elements Of The Offense:

1. That the accused willfully and maliciously caused an explosion, set fire to, burned, aided, counseled or procured the burning that resulted in damage to a dwelling house, church or place of worship, a public or private school facility, a manufacturing plant or warehouse, a building where business is conducted, an institutional facility, or any structure designed for human occupancy to include local and municipal buildings.

Note:

The property may belong to the accused or to another. Also, see §16-11-10 for definition of "dwelling house."

Penalty:

Imprisonment for not less than 5 years nor more than 25 years.

ARSON - THIRD DEGREE

Class E Felony

Code §16-11-110(C)
CDR Code 0008

Elements Of The Offense:

1. That the accused willfully and maliciously caused an explosion, set fire to, burned, aided, counseled or procured the burning that resulted in damage to a building or structure other than those specified for first or second degree arson, or a railway car, ship, boat, or other watercraft, aircraft, automobile or other motor vehicle, or personal property.

Penalty:

Imprisonment for not less than 1 year and not more than 10 years.

ATTEMPTED ARSON

Class F Felony

Code §16-11-190
CDR Code 76

Elements Of The Offense:

1. That the accused did willfully and maliciously attempt to set fire to, burn, or aid, counsel, or procure the burning of any buildings or property mentioned in §§16-11-110 to 16-11-140.

OR

That the accused committed an act in furtherance of burning any building mentioned in §§16-11-110 to 16-11-140.

Penalty:

Fine of not more than \$10,000 or imprisonment for not more than 5 years.

AVOIDING PAYMENT OF TELEPHONE SERVICES

Class C Misdemeanor

Code §16-13-400
CDR Code 29

Elements Of The Offense:

1. (a) That the accused knowingly avoided, in whole or in part, the payment of lawful charges for transmitted communication over the telephone or telegraph,

OR

- (b) That the accused attempted to avoid payment,

OR

- (c) That the accused caused another to avoid payment.

Note:

Among the ways one may attempt to avoid payment are:

1. Charging services to an existing number or credit card without the lawful holder's permission.
2. Charging services to nonexistent numbers or credit cards, or to numbers and cards which have been suspended, revoked, or cancelled.
3. Using a code or other prearranged scheme to send a message to another.
4. Tampering with telephone/telegraph company facilities or equipment to make a contact with another person.
5. Using any other fraudulent means to deceive the company.

Penalty:

Fine of not more than \$1,000, or imprisonment of not more than 1 year, or both.

BOMB THREATS/CONVEYING FALSE INFORMATION REGARDING ATTEMPTED USE OF A DESTRUCTIVE DEVICE

Class D or E Felony

Code §16-23-750
CDR Codes 2780, 2781

Elements Of The Offense:

1. (a) That the accused did convey, or causes to be conveyed, or did knowingly convey false information concerning the willful and unlawful attempt to use an explosive or incendiary to injure any person or damage any real or personal property,

OR

- (b) That the accused did aid, employ, or conspire with another to do, or cause to be done the above mentioned acts.

Penalty:

1st Offense: Imprisonment for not less than 1 nor more than 10 years;

2nd Offense and Subsequent offenses: Imprisonment for not less than 5 years nor more than 15 years.

A sentence imposed for a violation of this section must not be suspended and probation must not be granted.

BREACH OF TRUST WITH FRAUDULENT INTENT

Class E or F Felony

Code §16-13-230
CDR Codes 1185, 420-421

Elements Of The Offense:

1. That the accused did carry away the personal property of another.
2. That the property had been placed in his possession in trust.
3. That the intent of the accused in carrying away that property was to deprive the owner of its use by fraud.

Note:

This crime is an extension of the crime of larceny, having all the elements of larceny except the unlawful taking in the beginning.

Penalty:

If the amount is \$1,000 or less, the offense is a misdemeanor and punishable by a fine or imprisonment of not more than is permitted by law without presentment or indictment by the grand jury. Summary Court has jurisdiction over this offense.

If the amount is more than \$1,000 but less than \$5,000, a felony, punishable by a fine in the discretion of the court or imprisonment for not more than 5 years.

If the amount is \$5,000 or more, a felony, punishable by a fine in the discretion of the court or imprisonment for not more than 10 years.

BREAKING INTO AUTOMOBILES, TANKS

Class F Felony

Code §16-13-160
CDR Code 258

Elements Of The Offense:

1. That the accused did break into, or attempt to break into, a motor vehicle or any compartment thereof, with the intent to steal the same or anything of value therefrom, or attached, or annexed, or used in connection, or in the perpetration of a criminal act,

OR

2. That the accused did break or attempt to break into any tank, pump, or other vessel where kerosene, gasoline, or lubricating oil is stored or kept, with the intent to steal any such product.

Penalty:

Imprisonment for not more than 5 years or by a fine of not more than \$1,000, or both.

BURGLARY - FIRST DEGREE

Exempt Felony

Code §16-11-311
CDR Code 79

Elements Of The Offense:

1. That the accused did break and enter a dwelling without consent and with the intent to commit any crime and: one or more of the following aggravating circumstances are present:
 - a. armed with a deadly weapon (either himself or codefendant).
 - b. causes physical injury to any person who is not a participant in the crime.
 - c. threatens use of a dangerous instrument.
 - d. displays what appears to be a knife or firearm.
 - e. has a prior record of two or more convictions for burglary or housebreaking or a combination of both.
 - f. enters, remains in, or exits during the nighttime.

Note:

"Dwelling" is defined in §16-11-10 as any house, outhouse, apartment, building, erection, shed or box in which there sleeps a proprietor, tenant, watchman, clerk, laborer or person who lodges there with a view to the protection of the property. This includes any outhouse, building, shed and erection within 200 yards and appurtenant to it. "Dwelling" also means the living quarters of a building which is used or normally used for sleeping, living, or lodging by a person.

Penalty:

Imprisonment for life, but it may be reduced to not less than 15 years. For purposes of this section, "life" means until death.

BURGLARY - SECOND DEGREE

Class D Felony

Code §16-11-312
CDR Codes 80, 86

Elements Of The Offense:

1. That the accused did break and enter a dwelling without consent and with the intent to commit any crime. (no aggravating circumstances are present)

OR

2. That the accused did break and enter a building without consent and with the intent to commit any crime and one or more of the following aggravating circumstances are present:
 - a. is armed with a deadly weapon (either himself or codefendant).
 - b. causes physical injury to a nonparticipant in the crime.
 - c. threatens use of a dangerous instrument.
 - d. displays what appears to be a knife or firearm.
 - e. has a prior record of two or more convictions for burglary or housebreaking or a combination of both.
 - f. enters, remains in, or exits during the nighttime.

Note:

For a definition of "dwelling," see first degree burglary above. "Building" means any structure, vehicle, watercraft, or aircraft where any person lodges or lives, or where people assemble for business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of two or more units separately occupied or secured, each unit is both a separate building in itself and a part of the main building.

Penalty:

Imprisonment for not more than 15 years.

BURGLARY - THIRD DEGREE

Class E or F Felony

Code §16-11-313
CDR Codes 427, 428

Elements Of The Offense:

1. That the accused did break and enter a building without consent and with the intent to commit any crime.

Penalty:

1st Offense: Imprisonment for not more than 5 years

Second or Subsequent Offense: Imprisonment for not more than 10 years.

BURNING CROPS OR OTHER PERSONAL PROPERTY

Class A Misdemeanor

Code §16-11-140
CDR Code 263

Elements Of The Offense:

1. (a) That the accused willfully and maliciously set fire to or did burn or caused to be burned,

OR

- (b) That the accused willfully and maliciously did aid, counsel or procure the burning of
2. Any of the following: (a) barracks, cock, rick or stack of hay, corn, wheat, barley or other grain or vegetable product; (b) field of standing hay or grain of any kind; (c) pile of coal, wood or other fuel; (d) pile of planks, boards, posts, rails or other lumber.

Penalty:

Imprisonment of not more than 3 years.

BURNING LANDS OF ANOTHER

Class C Misdemeanor, Class F Felony

Code §16-11-150
CDR Codes 265, 266

Elements Of The Offense:

1. That the accused did intentionally set fire to the lands of another, or cause or allow fire to spread to the lands of another, and
2. That the accused did not have prior written permission of the owner or his agent to do so, and
3. That because of said act, the land, woods, fields, fences or marshes of another were burned.

Penalty:

1st Offense - fine not more than \$1,000 or a sentence of not more than 1 year, or both.

2nd or Subsequent Offense - fine not to exceed \$5,000 or a sentence not to exceed 5 years.

BURNING PERSONAL PROPERTY TO DEFRAUD INSURER

Class F Felony

Code §16-11-130
CDR Code 267

Elements Of The Offense:

1. (a) That the accused did willfully and with intent to injure or defraud an insurer set fire to or burn or cause to be burned,

OR

- (b) That the accused did willfully and with intent to injure or defraud an insurer, aid, counsel, or procure the burning of any goods, wares, merchandise, or other chattels or personal property of any kind whether the property belonged to him or to another person, and
2. That these said goods, etc., were at the time insured by any person against loss or damage by fire.

Penalty:

Imprisonment for not less than 1 year nor more than 5 years.

CARJACKING

Class B Felony

Code §16-3-1075
CDR Codes 2599, 2600

Elements Of The Offense:

1. That the accused did take or attempt to take a motor vehicle from another while that person was operating or in the motor vehicle, and
2. The accused used force and violence or intimidation to take or attempt to take the motor vehicle.

Penalty:

Imprisonment for not more than 20 years.

If great bodily injury results - imprisonment for not more than 30 years. For purposes of this section, "great bodily injury" means bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ. §16-3-1075(A).

COLORING OR SALE OF ANIMALS OR BIRDS

Unclassified Misdemeanor

Code §47-1-125
CDR Codes 1643, 1644

Elements Of The Offense:

1. That the accused artificially colored or dyed any animal or fowl, including but not limited to rabbits, baby chickens, and ducklings,

OR

2. That the accused brought any such dyed or colored animal or fowl into this State,

OR

3. That the accused sold, offered for sale, or gave away as merchandising premiums:
- a. baby chickens, ducklings, or other fowl under four (4) weeks of age, or
 - b. rabbits under two (2) months of age to be used as pets, toys or retail premiums.

Note:

This section does not apply to animals or fowl to be used or raised for agricultural purposes by persons with proper facilities to care for them, or for poultry or livestock exhibitions.

Penalty:

Fine of not more than \$200 or imprisonment for not more than 30 days.

COMPUTER CRIME

Class A or B Misdemeanor, Class E or F
Felony

§16-16-20
CDR Code 426, 681, 534, 745, 1212

Elements of the Crime:

1. (a) That the accused did willfully, maliciously, and without authorization did directly or indirectly access or cause to be accessed a computer, computer system, or computer network or introduce a computer contaminant into that computer, computer system, computer program, or computer network for the purpose of
 - (i) devising or executing any scheme or artifice to defraud;
 - (ii) obtaining money, property, or services by means of false or fraudulent pretenses, representations, promises; or
 - (iii) committing any other crime.

OR

- (b) That the accused did alter, damage, destroy, or modify a computer, computer system, computer network, computer software, computer program, or data contained in such computer, computer, system, computer program or computer network.

First Degree

A person is guilty of computer crime in the first degree if the amount of gain directly or indirectly derived from the offense made unlawful by the above or the loss directly or

indirectly suffered by the victim exceeds \$5,000 dollars. Computer crime in the first degree is a felony.

Penalty:

Fine of not more than \$125,000 dollars or imprisoned not more than 10 years, or both.

Second Degree

A person is guilty of computer crime in the second degree, if the amount of gain directly or indirectly derived from the offense or the loss directly or indirectly suffered by the victim is greater than one \$1,000 dollars but not more \$5,000 dollars. §16-16-20 (3) (a)

OR

That the accused did:

- (i) interfere with, caused to be interfered with, denied or caused to be denied any computer service to an authorized user of the computer service for the purpose of devising or executing any scheme or artifice to defraud, or obtained money, property, or services by means of false or fraudulent pretenses, representations, or promises, or committing any other felony;
- (ii) deprive the owner of possession of, took, transferred, concealed, or retained possession of any computer, data, computer property, or computer-related property, including all parts of a computer, computer system, computer network, computer software, computer services, or information associated with a computer, whether in a tangible or intangible form; or
- (iii) the gain derived from the offense or loss suffered by the victim cannot reasonably be ascertained.

Penalty:

First Offense - Fine of not more than \$10,000 or imprisoned not more than 1 year, or both.

Second or Subsequent Offense - Fine of not more than \$20,000 or imprisoned not more than 2 years, or both.

Third Degree

1. A person is guilty of Computer Crime in third degree if the amount of gain derived from the offense or loss suffered by the victim is not more than \$1,000,

OR

2. That the accused did willfully, knowingly, and without authorization or for an unauthorized purpose engage in computer hacking.

Penalty:

First Offense - Fine not more than \$200.00 or imprisoned not more than 30 days.

Second or Subsequent Offense - Fine not more than \$2,000 or imprisoned not more than 2 years, or both.

CUTTING, REMOVING OR TRANSPORTING FOREST PRODUCTS WITHOUT CONSENT OF THE LANDOWNER; FRADULENTLY ACQUIRING FOREST PRODUCTS

Class B Misdemeanor, Class E or F Felony

§16-11-580
CDR Codes 337, 647

Elements Of The Offense:

A. That the accused did knowingly or willfully:

1. cut, destroy or remove any forest products without the consent of the landowner;
2. aid, hire, or counsel another person to cut, destroy, or remove forest products without the consent of the landowner;
3. obtain or acquire forest product under false pretenses or with fraudulent intent; or
4. transport forest products if the person knows that eh forest products have been cut, removed, obtained, or acquired from the property of landowner in violation of the provisions of this subsection.

Note:

"Forest Products" include, but are not limited to, timber, trees, logs, lumber, or pine straw or any other products in the forest, whether merchantable or nonmerchantable, and which are located on any land in this State, whether publicly or privately owned.

Penalty:

If the value of the forest products is \$1000 or less, a person is guilty of a misdemeanor and fined not more than \$500 or imprisoned for not more than 30 days.

If the value of the forest products is more than \$1000 but less than \$5000, a person is guilty of a felony and fined in the discretion of the court or imprisoned for not more than 5 years.

If the value of the forest products is \$5000 or more, a person is guilty of a felony and fined in the discretion of the court or imprisoned for not more than 10 years.

DAMAGING BY MEANS OF EXPLOSIVE OR INCENDIARY

Class A, B, D or Exempt Felony

Code §16-23-720
CDR Codes 2772-2776, 2937-2938

Elements Of The Offense:

1. That the accused did intentionally and unlawfully use a destructive device or caused an explosion, or
2. That the accused did intentionally aid, counsel, solicit another, or procure an explosion by means of the use of a destructive device.

Penalty:

In cases resulting in the death of another person where there was malice aforethought, punishment by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for 30 years.

In cases resulting in the death of another person where there was not malice aforethought, imprisonment not less than 10 years nor more than 30 years.

In cases resulting in injury to a person, imprisonment for not less than 10 years nor more than 25 years.

In cases where there is damage to a building or other real or personal property, penalty of imprisonment for not less than 10 years nor more than 25 years.

OR

That the accused did knowingly possess, manufacture, transport, distribute, or did possess with the intent to distribute a destructive device or any explosive, incendiary device, or over-pressure device or toxic substance or material which has been configured to cause damage, injury, or death, or the accused possessed parts, components, or materials which when assembled constitute a destructive device. §16-23-720 (C)

Penalty:

Imprisonment for not less than 2 years no more than 15 years.

OR

The accused threaten, solicited another to threaten, or conspired to threaten to cause damage, injury, or death or did cause damage to or did destroy a building or other real or personal property by means of destructive device. §16-23-720 (D)

Penalty:

Imprisonment for not more than 15 years

OR

The accused knowingly protected, harbored, or concealed another who is known by the person to have planned, executed, or committed any violation of the provisions of Article 7. §16-23-720(E)

Penalty:

Imprisonment for not more than 15 years

DAMAGING OR TAMPERING WITH VEHICLE

Unclassified Misdemeanor

Code §16-21-90
CDR Code 655

Elements Of The Offense:

- A. 1. That the accused did damage or remove any parts of a vehicle, and
- 2. That the accused intended to do such acts and had no right to do so,

OR

- B. 1. That the accused without the right and with intent to commit a crime,
- 2. Tampered with a vehicle or any of its parts, or set or attempted to set it in motion.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days, or both. §16-21-130.

**DEFRAUDING HOTEL, INN, BOARDINGHOUSE,
ROOMING HOUSE, CAFE, OR RESTAURANT**

Unclassified Misdemeanor

Code §45-1-50
CDR Code 273

Elements Of The Offense:

- A. 1. That the accused did obtain food, lodging, or other service or accommodation at a hotel, motel, inn, boarding or rooming house, cafe or restaurant, and
- 2. That the accused did intentionally abscond without paying for items shown above.

OR

- B. That the accused, while a guest at a hotel, motel, inn, boarding or rooming house, cafe or restaurant, did intentionally defraud the keeper in a transaction arising out of such relationship as guest.

Note:

See §45-1-50(B) for prima facie evidence of intent to defraud.

Penalty:

Fine of not more than \$500 or imprisonment for not more than 6 months, or both.

DRIVING VEHICLE THROUGH PLANTED FIELDS

Unclassified Misdemeanor

Code §46-1-131
CDR Code 1606

Elements Of The Offense:

1. That the accused drove a vehicle through a field which was planted for agricultural or forestry purposes, and
2. That the accused was unauthorized to do so, and
3. That he did so in a willful or negligent manner.

Penalty:

Fine of not more than \$500 or imprisonment for not more than 90 days.

DUMPING LITTER ON PRIVATE OR PUBLIC PROPERTY

Unclassified and Class C Misdemeanor

Code §16-11-700
CDR Code 2322-2326, 635

Elements Of The Offense:

1. That the accused did dump, throw, drop, deposit, discard or otherwise dispose of litter or other solid waste on any public or private property, or waters in the State, and
2. (a) The property on which the waste was deposited was not designated by the State as a waste disposal site or the accused was not authorized to use such property for such purpose, or
(b) The waste was not deposited into a litter receptacle.

Note:

Magistrates and municipal courts are specifically granted trial jurisdiction over the offenses listed in subsections (A), (B), (C), and (D) of §16-11-700.

A prior violation within the meaning of this section means only a violation of this section which occurred within a period of 5 years including and immediately preceding the date of the last violation.

Penalty:

The fine for a deposit of a collection of litter or garbage in an area or facility not intended for public deposit of litter or garbage is \$1,000. In addition to a fine and for each offense under the provision of this item, the court shall also impose a minimum of 5 hours of litter-gathering labor or other form of public service as the court may order which is under the supervision of the court. §16-11-700(C)(2).

The court, in lieu of payment of the monetary fine imposed for a violation of this section, may direct the substitution of additional litter-gathering labor or other form of public service not to exceed one hour for each \$5.00 of fine imposed. §16- 11-700(C)(3).

In addition to any other punishment authorized by this section, in the discretion of the court in which conviction is obtained, the person may be directed by the judge to pick up and remove from any public place or any private property, with prior permission of the legal owner upon which the person has deposited litter, all litter deposited on the place or property by anyone before the date of execution of sentence. §16- 11-700(C)(4).

If amount of litter is less than 15 pounds in weight or 27 cubic feet in volume, a fine of not less than \$200 or imprisonment for not more than 30 days for a first or second conviction. Fine of \$500.00 or imprisonment for not more than 30 days for a third or subsequent offense. Also, the court shall impose a minimum of 8 hours of litter gathering labor for a first conviction, 16 hours of litter-gathering labor for a second conviction, and 24 hours of litter-gathering labor for a third or subsequent conviction or other form of public service as the court may order and which is under the supervision of the court, as the court may order because of physical or other incapacities. §16-11-700(C)(1).

If amount of litter exceeds 15 pounds in weight or 27 cubic feet in volume, but is less than 500 pounds or 100 cubic feet, a fine of not less than \$200 nor more than \$500 or imprisonment for not more than 90 days. Section 16-11-700(D).

If amount of litter exceeds 500 pounds in weight or 100 cubic feet in volume, a fine of not less than \$500 nor more than \$1,000 or imprisonment for not more than 1 year, or both. §16-11-700(E)(1).

EMBEZZLEMENT OF PUBLIC FUNDS

Class E or F Felony

Code §16-13-210
CDR Code 527, 419, 1184

Elements Of The Offense:

1. That the accused was an officer or other person charged with the safekeeping, transfer, and disbursement of any public funds, and
2. That the accused did embezzle those funds.

Note:

1. Embezzlement is the fraudulent appropriation or conversion, by an official, of money or property entrusted to him. Conversion is any exercise of ownership which is inconsistent with the owner's right.
2. §16-13-220 states that when evidence tending to prove such officer or other person has received public funds and failed to account for the funds as required by law, it is permissible to infer that the funds have been fraudulently appropriated by such person. The burden to show otherwise is upon the accused.

Penalty:

If the amount of the embezzled funds is less than \$5000: fine in the discretion of the court (to be proportioned to the amount embezzled) and imprisonment of not more than 5 years.

If the amount of the embezzled funds is \$5000 or more: fine in the discretion of the court (to be proportioned to the amount embezzled) and imprisonment of not more than 10 years.

ENTERING BANK TO STEAL

Class A Felony

Code §16-11-380
CDR Code 257

Elements Of The Offense:

1. That the accused did enter any building or part of a building occupied as a bank, depository, building and loan association, and
2. That the intent of the entry was to steal any money or securities for money, either by force, intimidation or threats.

Penalty:

Imprisonment for not more than 30 years.

ENTERING HOUSE WITHOUT BREAKING

Class E Felony

Code §16-13-170
CDR Code 171

Elements Of The Offense:

- A. 1. That the accused did enter, or attempt to enter, without breaking, any house or vessel whatsoever with the intent to steal or commit any other crime therein,

OR

- B. That the accused did conceal himself within any house or vessel with the intent to commit the act of stealing or any crime therein.

Penalty:

Fine in the discretion of the court or imprisonment for not more than 10 years, or both.

ENTERING PREMISES AFTER WARNING OR REFUSING TO LEAVE ON REQUEST

Unclassified Misdemeanor

Code §16-11-620
CDR Code 1167

Elements Of The Offense:

1. That the accused, without legal cause or good excuse, did enter a dwelling, place of business or the premises of another person.
2. (a) That the accused had been warned not to enter such premises,

OR

- (b) That the accused, without good cause or good excuse, fails or refuses to leave immediately after having been requested to do so by the person in possession of such premises, or by his agent or representative.

Note:

This section may not be construed to deprive a person of his civil rights as guaranteed by the Civil Rights Act of 1964.

Penalty:

Fine of not more than \$200 or imprisonment for not more than 30 days.

ENTRY ON ANOTHER'S LAND AFTER NOTICE

Unclassified Misdemeanor

Code §16-11-600
CDR Code 2320

Elements Of The Offense:

1. That the accused did enter the lands of another, and
2. That the accused was on notice that such entry was prohibited.

Note:

It shall be sufficient notice for this statute, if a landowner posts signs in four conspicuous places on the borders of his land prohibiting entry thereon. The word entry means an occupancy or possession contrary to the wishes of the person in rightful possession of such lands. It is not necessary that such person have legal title to such lands.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days.

**REFUSING TO LEAVE CERTAIN PUBLIC PREMISES
DURING HOURS WHEN THEY ARE REGULARLY CLOSED**

Unclassified Misdemeanor

Code §16-11-630
CDR Code 1168

Elements Of The Offense:

1. That the accused did refuse to leave the premises owned or occupied by a state, county or municipal agency during those hours of the day or night when the premises are regularly closed to the public.
2. That such refusal or failure to leave the premises was without justifiable cause.
3. That request to leave was made by a law-enforcement officer or guard, watchman or custodian responsible for security or care of the premises.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days.

ENTRY ON ANOTHER'S LANDS FOR VARIOUS PURPOSES
WITHOUT PERMISSION

Unclassified Misdemeanor

Code §16-11-610
CDR Codes 340, 652, 653

Elements Of The Offense:

1. That the accused did enter the lands of another for the purpose of hunting, fishing, trapping, netting, gathering fruit, wild flowers, cultivated flowers, shrubbery, straw, turf, vegetables, herbs, or cutting timber, and
2. That such entry was made without the permission of the owner or manager of the lands.

Note:

Magistrates and municipal judges to report convictions to SLED.

Penalty:

1st Offense - fine of not more than \$200 or imprisonment for not more than 30 days.

2nd Offense - Fine of not less than \$100 nor more than \$200 or imprisonment for not more than 30 days.

3rd & Subsequent Offense - Fine of not less than \$500 nor more than \$1,000 or imprisonment for not more than 6 months or both.

FAILURE TO RETURN RENTED OBJECTS;
FRAUDULENT APPROPRIATION OF SUCH

Misdemeanor, Class E or F Felony

Code §16-13-420
CDR Codes 520-522

Elements Of The Offense:

1. That the accused did have in his possession and under his control by virtue of a lease or rental agreement any motor vehicle, trailer, appliance, equipment, tool,

clothing, or formal wear

2. (a) That the accused did willfully and fraudulently fail to return any of the said items within seventy-two hours after the lease or rental agreement expired,

OR

- (b) That the accused did fraudulently secrete or appropriate the property to any use not within the rental agreement.

Note:

This section does not apply to lease-purchase agreements or conditional sales contracts.

Penalty:

If the value of the leased or rented item is \$1,000 or less; fine or imprisonment for not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days). Third and subsequent offenses involving property valued at \$1,000 or less are general sessions offenses (See §16-1-57).

If the value of the item is more than \$1,000 but less than \$5,000; a fine in the discretion of the court or imprisonment for not more than 5 years, or both.

If the value of the item is \$5,000 or more; fine in the discretion of the court or imprisonment for not more than 10 years, or both.

FAILURE TO RETURN RENTED VIDEO CASSETTE

Misdemeanor/ Class E or F Felony

Code §16-13-425
CDR Code 523-525

Elements Of The Offense:

1. That the accused did have in his possession and under his control by virtue of a lease or rental agreement a video or cassette tape, and
2. (a) That the accused did willfully and fraudulently fail to return the video or cassette tape within 72 hours after the lease or rental agreement had expired,

OR

- (b) That the accused did fraudulently secrete or appropriate the property to any use not within the rental agreement.

Note:

As a prerequisite for a warrant to be issued, notice of the expiration of the lease or rental period must be given by the merchant by certified mail to the person at the address recorded on the lease or rental contract.

Penalty:

If the value of the video or cassette tape is \$1,000 or less, the defendant will be guilty of petit larceny [§16-13-30(A)], which is punishable by a fine or imprisonment of not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days).

If the value of the video or cassette tape is more than \$1,000 but less than \$5,000, the defendant will be guilty of grand larceny, punishable by a fine in the discretion of the court or imprisonment for not more than 5 years, or both.

If the value of the video or cassette tape is \$5,000 or more, the defendant will be guilty of grand larceny, punishable by a fine in the discretion of the court or imprisonment for not more than 10 years, or both.

FALSE REPORTS OF STOLEN OR CONVERTED VEHICLES

Unclassified Misdemeanor

Code §16-21-100
CDR Code 645

Elements Of The Offense:

1. That the accused falsely reported the theft or conversion of a vehicle to a peace officer, and
2. That the accused made such a report knowing it to be false.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days, or both. (§16-21-130).

OBTAINING PROPERTY UNDER FALSE TOKENS OR LETTERS

Misdemeanor/Class E or F Felony

Code §16-13-260
CDR Codes 423, 532, 1187

Elements Of The Offense:

1. That the accused did falsely and deceitfully obtain any money, goods, chattels, jewels, or other things of any other person by color and means of any false token or counterfeit letter made in any other person's name.

Penalty:

If the value of the property is \$1,000 or less; not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days).

If the value of the item is more than \$1,000 but less than \$5,000; fine in the discretion of the court or imprisonment for not more than 5 years, or both.

If the value of the property is \$5,000 or more; fine in the discretion of the court or imprisonment for not more than 10 years or both.

FORGERY

Misdemeanor, Class E or F Felony

Code §16-13-10
CDR Codes 488, 491, 2427

Elements Of The Offense:

1. That the accused did falsely make, forge, or counterfeit; or cause or procure to be falsely make, forged, or counterfeited, or willfully acted or assisted in the false making, forging or counterfeiting of any writing or instrument of writing;
2. That the accused represented or intended the instrument to be published as a genuine instrument, and
3. That the accused intended to defraud a person.

Note:

Forgery includes the making, forging or counterfeiting, or so causing, or uttering or publishing, or altering, changing, defacing, or erasing, or so causing these, to an instrument or writing, or record, or plat of land, or willingly acting or assisting in any of these.

Penalty:

If the forgery does not involve a dollar amount; fine in the discretion of the court or imprisonment for not more than 3 years, or both.

If the amount of the forgery is less than \$5,000; fine in the discretion of the court or imprisonment for not more than 5 years, or both.

If the amount of the forgery is more than \$5,000; fine in the discretion of the court or imprisonment for not more than 10 years, or both.

GASOLINE, UNLAWFUL TO DISPENSE WITHOUT PAYMENT

Unclassified Misdemeanor

Code §16-13-185
CDR Code 2814

Elements of the Offense:

1. That the accused did intentionally drive a motor vehicle from the premises of an establishment at which gasoline offered for retail sale was dispensed into the fuel tank without making payment for the gasoline;

Penalty:

Fine of not more than \$500 or imprisoned not more than 30 days, or both; and at the

discretion of the sentencing judge, the person's driver license may be suspended for a period not to exceed 30 days for a first offense and for a period not to exceed 90 days for a second or subsequent offense.

GRAND LARCENY

Class E Felony

Code §16-13-30(B)
CDR Codes 478-479

Elements Of The Offense:

1. That the accused did take goods, chattels, instruments, or other personality of which by law larceny may be committed; and
2. That the accused intended to convert the personal property to a use other than that of the owner, without the owner's consent, and
3. That the value of the thing taken was over \$1,000.

Penalty:

Fine in the discretion of the court and imprisonment for not more than:

1. 5 years if the value of the personalty is more than \$1,000 but less than \$5,000.
2. 10 years if the value of personalty is \$5,000 or more.

ILL-TREATMENT OF ANIMALS

Class B Misdemeanor
Class F Felony

Code §47-1-40
CDR Codes 610, 911, 1634, 2804

Elements Of The Offense:

A. That the accused overloaded, overdrove, overworked, tortured, tormented, needlessly mutilated, cruelly killed, ill-treated or deprived of necessary food or shelter any animal,

OR

B. That the accused tortured, tormented, needlessly mutilated, cruelly killed, or inflicted any unnecessary pain or suffering upon any animal,

Note:

"Malicious injury to animals," §16-11-510 covers willful, unlawful and malicious injuries to animals of another.

Penalty:

For a violation of "A" above:

1st Offense - Imprisonment not exceeding 60 days or a fine not less than \$100 nor more than \$500, or both.

2nd Offense - Imprisonment not exceeding 90 days or a fine not exceeding \$800, or both.

3rd Offense - Imprisonment not exceeding 2 years or a fine not exceeding \$2,000, or both.

For a violation of "B" above - Imprisonment of not less than 180 days and not exceeding 5 years, and by a fine of \$5,000.

INJURY OR DESTRUCTION OF BUILDINGS OR CROPS BY TENANT

Class A Misdemeanor

Code §16-11-570
CDR Code 613

Elements Of The Offense:

1. That the accused was a tenant, and
2. That the accused did willfully and maliciously cut, deface, mutilate, burn, destroy, or otherwise injure any dwelling house, building or crops in his possession.

Penalty:

Fine in the discretion of the court, or imprisonment for not more than 3 years, or both.

LARCENY OF BICYCLES

Unclassified Misdemeanor

Code §16-13-80
CDR Codes 1181-1182

Elements Of The Offense:

1. That the accused, without consent of the owner, did take and carry away any bicycle, and
2. That the accused intended to convert the bicycle to a use other than that of the owner.

Penalty:

If the value of the bicycle is less than \$1,000, a fine of not more than \$500 or imprisonment for not more than 30 days.

If the value of the bicycle is \$1,000 or more, punishment is in the discretion of the court.

LARCENY OF LIVESTOCK

Misdemeanor, Class E or F Felony

Code §16-13-50

Elements Of The Offense:

1. That the accused, without the consent of the owner, did take and carry away any horse, mule, cow, hog, or any other livestock, and
2. That the accused intended to convert the livestock to a use other than that of the owner.

Note:

A motor vehicle or other chattel used by or found in possession of a person engaged in the commission of this offense must be confiscated and sold pursuant to §27-21-10.

Penalty:

If the value of the livestock is \$1,000 or less, the offense is a misdemeanor and punishable by a fine or imprisonment not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days).

If the value of the livestock is more than \$1,000 but less than \$5,000, a felony, punishable by imprisonment for not more than 5 years or a fine of not more than \$500, or both.

If the value of the livestock is \$5,000 or more, a felony, punishable by imprisonment for not more than 10 years or a fine of not more than \$2,500, or both.

**MALICIOUS INJURY /INTERFERENCE WITH MICROWAVE RADIO
OR TELEVISION FACILITIES**

Class C Misdemeanor

Code §16-11-730
CDR Code 720

Elements Of The Offense:

1. (a) That the accused did willfully or maliciously break, injure, or otherwise damage any posts, wires, towers, or other materials employed in the construction or use of any line of a television coaxial cable, or a microwave radio system or a community antenna television system,

OR

- (b) That the accused did willfully or maliciously interfere with any of the above named structures,

OR

- (c) That the accused in any way did attempt to lead from its uses or make use of the electrical signal from such structures.

Penalty:

Fine not to exceed \$1,000 or imprisonment for not more than one year, or both, in the discretion of the court.

MALICIOUS INJURY TO PLACE OF WORSHIP

Class F Felony

Code §16-11-535
CDR Code 2458

Elements Of The Offense:

1. That the accused did willfully, unlawfully and maliciously vandalize, deface, damage, or destroy any place, structure, or building of worship or aid, agree with, employ, or conspire with any person to do or cause to be done any of the acts mentioned above

Penalty:

Fine of not more than \$10,000, imprisonment for not less than 6 months nor more than 10 years or both.

MALICIOUS INJURY TO ANIMALS AND TO PROPERTY

Class E Felony

Code §§16-11-510 and 16-11-520
CDR Codes 492-494, 416, 510, 1165

Elements Of The Offense:

1. That the accused did willfully, unlawfully and maliciously injured the property of another.

Note:

Section 16-11-510 refers to personal property, such as horse, mule, cattle, or any kind of goods and chattels of another, other than real property. Section 16-11-520 refers to real property, such as trees, houses, fences or fixtures.

Penalty:

If the injury or damage to property is \$1,000 or less, the offense is triable in magistrate's court; punishable by a fine or imprisonment for not more than is permitted by law without presentment or indictment of the grand jury (\$500 or 30 days).

If the injury or damage to property is more than \$1,000 but less than \$5,000; fine in the discretion of the court or imprisonment for not more than 5 years, or both.

If the injury or damage to property is \$5,000 or more; fine in the discretion of the court or imprisonment for not more than 10 years, or both.

Note: Felony convictions pursuant to §16-11-510 are punishable by the above attached penalty of fine, imprisonment or both.

OBTAINING SIGNATURE OR PROPERTY BY FALSE PRETENSE

Misdemeanor, Class E or F Felony

Code §6-13-240
CDR Codes 422, 531, 1186

Elements Of The Offense:

1. That the accused did obtain the signature of a person to a written instrument or did obtain property by false representation of a material fact, and
2. That the accused knew the representation to be false, and
3. That the representation was of a present or past fact, and
4. That the person from whom the goods were obtained relied upon the representation to be true, and
5. That the accused did intend to cheat or defraud the person from whom the goods were obtained.

Note:

A promise to do something in the future is not a pretense. An opinion is not a pretense. Obtaining satisfaction of a debt by false pretenses is not within this section.

Penalty:

If the value of the property is \$1,000 or less; fine or imprisonment for not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days).

If the value of the property is more than \$1,000 but less than \$5,000; fine in the discretion of the court or imprisonment for not more than 5 years.

If the value of the property is \$5,000 or more; fine of not more than \$500 dollars and imprisonment for not more than 10 years.

PARKING ON PRIVATE PROPERTY WITHOUT PERMISSION

Unclassified Misdemeanor

Code §16-11-760
CDR Code 2329

Elements Of The Offense:

1. That the accused did park a vehicle on the private property of another, and
2. That the accused did such without the owner's consent, and
3. That the owner has posted a notice prohibiting such parking around the borders of his property near each entrance.

Note:

Proof of the posting of private property shall be deemed conclusive notice against the person parking his vehicle where prohibited.

The vehicle may be towed away and stored at the vehicle owner's expense, with the towing and storage charge constituting a lien against the vehicle. After 30 days, and after written notice by certified mail has been sent to the owner's last known address informing him that the towing and storage charges are due, the vehicle shall be sold pursuant to §29-15-10 by a magistrate in the county in which the vehicle was towed or stored.

Penalty:

In addition to other remedies authorized by section, fine not less than \$25 and not more than \$100 or imprisonment not exceeding 30 days.

PETIT LARCENY

Unclassified Misdemeanor

Code §16-13-30(A)
CDR Code 480

Elements Of The Offense:

1. (a) That the accused without consent of the owner, did take certain goods, choses in action, bank bills, bills receivable, chattels, or other article of personalty of which by law, larceny may be committed, or
(b) That the accused did take any fixture, part, or product of the soil severed from the soil by an unlawful act, and
2. That the accused intended to convert the personal property to a use other than that of the owner, and
3. That the value of the thing taken was \$1,000 or less

Penalty:

Fine or imprisonment for not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days).

PURSE SNATCHING

Class A Misdemeanor

Code §16-13-150
CDR Code 129

Elements Of The Offense:

1. That the accused did snatch suddenly and carry away from the person of another a purse or other thing of value, and
2. The accused did intend to deprive the owner or person in lawful possession of such article.

Note:

Purse snatching involves an awareness of the theft by the victim. If the owner's grasp was firm enough to foil the first attempt to snatch, and the thief did not gain possession until after a struggle, the offense is robbery. If the "snatcher" uses violence or intimidation, the accused should be charged with robbery, not purse snatching.

Penalty:

Imprisonment for not more than 3 years.

RECEIVING STOLEN GOODS

Misdemeanor, Class E or F Felony

Code §16-13-180
CDR Codes 512-514

Elements Of The Offense:

1. That the accused did buy, receive, or possess goods chattels or other property which has been stolen or taken by any person, and
2. That the accused did so knowing or having reason to know the same to have been stolen.

Note:

It is not material to this violation whether or not the principal felon has been convicted or is amenable to justice. State v. Tindall, 213 S.C. 484, 50 S.E. 2d 188 (1948).

If the property is, in fact, stolen, one who receives it does so with knowledge if he either (1) knows it to be stolen, or (2) reasonably believes it to be stolen, or (3) has his suspicions aroused and refuses to investigate for fear he will discover that it has been stolen.

The receipt of multiple items in a single transaction or event constitutes a single offense.

Penalty:

If the value of the property is \$1,000 or less, the offense is a misdemeanor and punishable by a fine or imprisonment of not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days).

If the value of the property is more than \$1,000 but less than \$5,000, a felony, punishable by a fine of not less than \$1,000 or imprisonment for not more than 5 years.

If the value of the property is \$5,000 or more, a felony, punishable by a fine of not less than \$2,000 or imprisonment for not more than 10 years.

ROBBERY ON TRAINS

Class C Felony

Code §16-11-360
CDR Code 140

Elements Of The Offense:

1. That the accused did enter upon any locomotive engine or car on any railroad in this State, and
2. That the accused did, by threats, exhibition of deadly weapons, or the discharge of any pistol or gun, induce or compel any person to surrender anything of value.

Note:

See §16-11-350 for the crime of train robbery by stopping train.

Penalty:

Imprisonment for not less than 10 nor more than 20 years.

ROBBERY - OPERATORS OF VEHICLES FOR HIRE

Class B Felony

Code §16-11-370
CDR Code 328

Elements Of The Offense:

1. That the accused was armed with a pistol, dirk, slingshot, metal knuckles, razor or other deadly weapon, and
2. That the accused robbed or attempted to rob a person operating a motor vehicle for the transportation of paying passengers.

Penalty:

For robbery - imprisonment for not less than 10 years or more than 30 years, no part of which may be suspended. [§16-11-330(A)].

For attempted robbery - imprisonment for not more than 20 years. [§16-11-330(B)].

ROBBERY WHILE ARMED WITH A DEADLY WEAPON

Class A or C Felony

Code §16-11-330
CDR Codes 26, 139

Elements Of The Offense:

1. That the accused did commit robbery from the person of another or in his presence, and
2. That the accused did use or threaten to use force and violence,

OR

3. That the person robbed was put in fear by the use or threat of force and violence,

and

4. That the accused was armed with a deadly weapon or the accused alleged by actions or words that he was armed by using a representation of a deadly weapon which a person would reasonably believe is a deadly weapon.

Note:

The weapon has been defined as pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon.

Penalty:

For Robbery - imprisonment for a mandatory minimum term of not less than 10 years nor more than 30 years, no part of which may be suspended. [§16-11-330(A)].

For Attempted robbery - imprisonment for not more than 20 years. [§16-11-330(B)].

SAFECRACKING

Class A Felony

Code §16-11-390
CDR Code 141

Elements Of The Offense:

1. That the accused used explosives, tools, or any other implement in or about a safe used for keeping money or other valuables, and
2. That the intent of the accused in said act was to commit larceny or any other crime.

Penalty:

Imprisonment for not more than 30 years.

SHOPLIFTING

Misdemeanor, Class E & F Felony

Code §16-13-110
CDR Codes 528-530

Elements of the offense:

1. That the accused did willfully:
 - a. Take possession of, carry away, transfer from one person to another, or from one area of a store to another, or cause to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment.

OR

- b. Alter, transfer, or remove any label, price tag marking, indicia of value or other value-related markings of any merchandise displayed, held, stored, or offered for sale.

OR

- c. Transfer any such merchandise from the container in which it is displayed to any other container.

AND

2. That by any of the above actions the accused did intend to deprive the merchant of the possession, use or benefit of such merchandise without paying full retail value.

Penalty:

If the value of the shoplifted merchandise is \$1,000 or less; fine of not more than \$500 or imprisonment for not more than 30 days.

If the value of the goods is more than \$1,000 but less than \$5,000; fine of not more than \$1,000 or imprisonment for not more than 5 years, or both.

If the value of the goods is \$5,000 or more; imprisonment for not more than 10 years.

STEALING DOGS

Unclassified Misdemeanor

Code §16-13-60
CDR Code 332

Elements Of The Offense:

1. That the accused did unlawfully take and carry away a dog, and
2. That another person has a right of property in that dog.

Penalty:

Fine not to exceed \$500 or imprisonment not to exceed 6 months, or both.

SWINDLING

Unclassified Misdemeanor

Code §16-13-320
CDR Code 150

Elements Of The Offense:

1. (a) That the accused did entice any person to play at cards, dice, or any other game involving bets and wagers.

OR

- (b) That the accused enticed another to share a part in the stakes or wagers involved in such a game.

OR

- (c) That the accused sold or exposed to sale any kind of property which had already been sold or exchanged.

OR

- (d) That the accused did cheat another person by any other form of cunning or deception that caused an ignorant or unwary person to lose money or property.

Note:

The use of paper to represent a bank bill and the obtaining of property from an ignorant person under threat of prosecution have each been held to be within the framework of this statute. The selling of a promissory note, knowing that it was paid but representing that it was unpaid, was not an indictable offense under this law.

Penalty:

Fine at the discretion of the judge, plus refund to the aggrieved party double the amount of the loss. If the fine is not paid immediately, with costs, the defendant shall be imprisoned for not more than 6 months, unless the fine is paid before this term expires.

TAMPERING WITH UTILITY METERS

Class A Misdemeanor

Code §16-13-385
CDR Codes 728, 1197

Elements Of The Offense:

1. That the accused did alter, tamper with, or bypass a meter which measures the use of electricity, gas or water.

Note:

Any meter which is found that has been tampered with so that use of electricity, gas, or water is not recorded, or inaccurately measured shall constitute prima facie evidence that the person in whose name the meter was installed or the person for whose benefit the electricity, gas, or water was diverted from the meter caused it to be diverted.

Penalty:

1st offense - Fine of not more than \$500 or imprisonment for not more than 30 days.

2nd or subsequent offense - fine of not more than \$10,000 or imprisonment for not more than 3 years, or both.

THEFT OF ELECTRIC CURRENT

Unclassified, Class A Misdemeanor

Code §16-13-380
CDR Codes 1195-1196, 2452

Elements Of The Offense:

1. That the accused, or an agent of the accused, had no contract, agreement, license, or permission with or from any person authorized to manufacture, sell, or use electricity for the purpose of light, heat, or power, and
2. That the accused willfully withdrew or caused to be withdrawn the current from the wires of the person authorized to manufacture, sell, or use electricity.

Note:

Any person aiding, abetting, or assisting the accused in withdrawing current from the wires must be punished in the same manner as the accused.

Penalty:

First offense: imprisonment for not more than 30 days or fine of not more than \$500.

Second or subsequent offense - imprisonment for not more than 3 years or fine of not more than \$10,000, or both.

TOOLS FOR CRIMINAL USE

Class F Felony

Code §16-11-20
CDR Code 124

Elements Of The Offense:

1. That the accused did make, mend, cause to be made or mended, or did possess any instrument, implement or other thing, adapted, designed, or commonly used for the commission of burglary, larceny, safecracking or other crime, and
2. That the circumstances did evince an intent to use or employ or allow the instrument to be used or employed in the commission of a crime, or knew the same was to be so used.

Note:

Such instrument shall mean any engine, machine, tool, false key, picklock, bit, nippers, nitroglycerine, dynamite cap, coil or fuse, steel wedge, drill, tap-pin, or other instrument or thing.

Penalty:

Fine at the discretion of the judge or imprisonment for not more than 5 years, or both.

TRAIN ROBBERY

Class C Felony

Code §16-11-350
CDR Code 136

Elements Of The Offense:

- A. 1. That the accused did stop, or cause to be stopped, any locomotive engine, or railroad car, by force or threat or intimidation, and
2. That the purpose of said action was to take anything of value to be appropriated to his own use.

OR

- B. That the accused was one of a number of persons who did conspire together to stop any engine or car for the purpose of taking anything of value.

Penalty:

Imprisonment from not less than 2 years nor more than 20 years.

TRESPASS

Misdemeanor

Code §§16-11-600 and 16-11-610
CDR Codes 2320, 340, 652-653

Elements Of The Offense:

16-11-600

1. That the accused did enter upon the pasture or other lands of another after notice from the owner or tenant prohibiting such entry.

Note:

Notice posted in four conspicuous places upon the borders of such land shall be deemed and taken as notice conclusive against the person.

Penalty:

Imprisonment for not more than 30 days or fine of not more than \$100.

16-11-610

1. That the accused did enter upon the lands of another for the purpose of hunting, fishing, trapping, netting, gathering fruit, or flowers, turf, vegetables or cutting

timber, etc., without the consent of the owner or tenant.

Note:

See §16-11-620 for violations concerning entry after warning or refusing to leave on request.

Penalty:

First offense: imprisonment for not more than 30 days or fine of not more than \$200.

Second offense - imprisonment for not more than 30 days, or fine of not less than \$100 nor more than \$200.

Third or Subsequent offense - imprisonment for not more than 6 months or fine of not less than \$500 nor more than \$1,000, or both.

TRESPASS UPON RAILROAD TRACKS

Unclassified Misdemeanor

Code §58-17-4096
CDR Code 2580

Elements Of The Offense:

1. That the accused, without proper authority, trespassed upon railroad tracks.

Penalty:

Imprisonment for not more than 30 days or fine of not more than \$200.

USE OF VEHICLE WITHOUT PERMISSION

Class A or C Misdemeanor

Code §16-21-60
CDR Codes 756, 222

Elements Of The Offense:

- A. 1. That the accused, not entitled to possession and without the consent of the owner, did take a vehicle with intent to deprive the owner of its possession.

OR

- B. 1. That the accused deprived the owner of the vehicle for a temporary purpose only, unconnected with the commission or intent to commit a crime other than the taking of the vehicle.

Penalty:

For "A" above - imprisonment for not more than 3 years.

For "B" above - fine of not more than \$500 or imprisonment for not more than 1 year, or both.

WILLFUL SALE OF PROPERTY ON WHICH A LIEN EXISTS

Class A Misdemeanor

Code §29-1-30
CDR Codes 2354-2355

Elements Of The Offense:

1. That the accused willfully and knowingly sold and conveyed any real or personal property on which a lien exists without first giving notice of this lien to the purchaser, and
2. That the accused is not a public officer acting in the discharge of his duty.

Note:

Magistrate's or municipal courts may try cases in which the value of the lien in question is fifty dollars or less. In such instances, the general sessions court shall have concurrent jurisdiction.

The object of this section is to prevent the intentional fraud or deceit in the sale of property by the suppression of facts which would be important for the purchaser to know before the sale is completed.

Penalty:

Fine of not less than \$10 nor more than \$5,000 and imprisonment of not less than 10 days nor more than 3 years, either or both in the discretion of the court.

If the value of the property is less than \$50, the offense is punishable by a fine or imprisonment of not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days).

SALE OF SECURED PROPERTY WITHOUT CONSENT

Class C Misdemeanor, Class E, F Felony

Code §36-9-410
CDR Codes 805, 1357

Elements Of The Offense:

1. That the accused did sell or dispose of personal property, other than personal property titled by the Department of Public Safety or the Natural Resources Enforcement Division, and
2. The property is subject to a security interest, and
3. The sale or disposal is without the written consent of the secured party, and
4. The intent is to defraud the secured party, and
5. The accused failed to pay the debt secured by the security interest within 10 days after sale or disposal, or failed in such time to deposit the amount of the debt with

the clerk of court of Common Pleas of the county in which the secured party resides.

Note:

This section does not apply:

- (1) if the sale is made without the knowledge or notice of the perfected security interest to the purchaser by the person selling the property
- (2) to the granting of subsequent security interests;
- (3) if the loan security by the personal property includes a charge for nonfiling insurance, or
- (4) to personal property titled by the Department of Public Safety or the Law Enforcement Division of the South Carolina Department of Natural Resources

Penalty:

If the value of the property is \$1000 or less, the offense is triable in magistrate?s or municipal court and is punishable by a fine of not more than \$500 or imprisoned not more than 30 days, or both.

If the value of the property is more than \$1000 but less than \$5000, a person who violates the provisions of this section is guilty of a felony and upon conviction, must be fined in the discretion of the court or imprisoned not more than 5 years, or both.

If the value of the property is \$5000 or more, a person who violates the provisions of this section is guilty of a felony and upon conviction, must be fined in discretion of court or imprisoned not more than 10 years, or both.

G.
Offenses Against Public Justice

ACCEPTANCE OF BRIBES BY OFFICERS

Class E Felony

Code §16-9-220
CDR Code 261

Elements Of The Offense:

1. That the accused did corruptly accept a gift or gratuity or promise of either, and
2. That the gift or gratuity or promise of either was to influence his act, decision or judgment in a given matter, and
3. That the matter was an official proceeding in which the person was acting or was to act in his official capacity, and
4. That his act, decision or judgment was for the benefit of the donor.

Note:

See §§16-9-240 and 250 for unlawful acceptance of consideration or remuneration by peace officers.

Penalty:

Imprisonment for not more than 10 years; or a fine not exceeding \$5,000 and imprisonment for not more than 2 years. In addition, the accused shall forfeit his office and be forever disqualified to hold any public office in this State.

ACCEPTANCE OF BRIBE BY JUROR

Class F Felony

Code §16-9-270
CDR Code 259

Elements Of The Offense:

1. That the accused was accepted as a juror or was appointed as an arbitrator, umpire or referee, and
2. That the accused was offered a gift or gratuity from a party interested in the suit, cause or proceeding in which he sat, and
3. That the gift or gratuity was offered with the intent to corrupt or influence his act or decision in the matter, and
4. That the accused did corruptly accept the gift or gratuity.

Penalty:

Imprisonment for not more than 5 years or by fine not exceeding \$1,000 and imprisonment not exceeding 1 year.

ACCEPTANCE OF EXTRA COMPENSATION

Class F Felony

Code §16-9-230
CDR Code 235

Elements Of The Offense:

1. That the accused did accept a rebate or extra compensation in addition to that provided by law, and
2. That the accused is a person holding an office or position of trust or profit in this State or in the public institutions of this State.

Penalty:

Fine not less than \$100 nor more than \$500 or imprisonment for not less than 3 months nor more than 5 years.

AIDING ESCAPE FROM JAIL

Class E Felony or Class B Misdemeanor

Code §16-9-410
CDR Codes 464-465

Elements Of the Offense:

A. That the accused did, by any means, aid and assist a prisoner to escape.

OR

B. That the accused did forcibly rescue a prisoner held in custody.

OR

C. 1. That the accused did arrange to convey into a jail or like institution, a disguise, instrument, tool, weapon or other thing to aid a prisoner in making an escape, and

2. That the intent of this act was to aid in making escape easier.

Penalty:

If the offense is a Felony- Imprisonment for not more than 10 years.

AIDING ESCAPE FROM CUSTODY OF OFFICERS

Class B Misdemeanor

Code §16-9-420
CDR Code 4

Elements Of the Offense:

1. That the accused did aid or assist a prisoner to escape or attempt to escape from an officer or person having lawful custody of such prisoner.

Penalty:

Imprisonment for not more than 2 years or a fine of not more than \$500.

If the offense is a Misdemeanor- Imprisonment for not more than 2 years, or a fine of not more than \$500 if the person whose escape or rescue was effected or intended was charged with a noncapital offense.

BRIBERY OF WITNESS IN CRIMINAL CASE

Class C Misdemeanor

Code §16-9-370
CDR Codes 236-237

Elements Of the Offense:

1. That the accused knew of the commission of an offense.
2. That he took any money or reward.
3. That the accused had an agreement or understanding, express or implied, and
4. That such an agreement or understanding was that the accused would:
 - a. compound the offense, or
 - b. conceal the offense, or
 - c. not prosecute the offense, or
 - d. not give evidence as to the offense.

Penalty:

If the offense involved is a felony - Imprisonment for not more than 1 year or a fine of not more than \$500, or both.

If the offense involved is a misdemeanor - Imprisonment for not more than 3 months, or a fine of not more than \$100, or both.

CORRUPTING JURORS

Class F Felony

Code §16-9-260
CDR Codes 271

Elements Of the Offense:

1. That the accused corrupted or attempted to corrupt a juror, arbitrator, umpire or referee by giving, offering or promising a gift or gratuity, and
2. That the intent of the gift or gratuity was to bias the opinion or influence the decision of such person, and
3. That the matter in which the incident took place was a cause pending in the court

or before an inquest or for the decision for which the person had been chosen or appointed.

Penalty:

Imprisonment for not more than 5 years; or a fine of not more than \$1,000 dollars and imprisonment for not more than 1 year.

INFLUENCING A JUROR

Misdemeanor

Code §16-9-350
CDR Code 310

Elements Of the Offense:

1. That the accused did:
 - a. attempt, personally or through third parties,
 - b. to influence the decision,
 - c. of any grand or petit jury of any court in this State (or any prospective juror),
 - d. upon any matter which is (or may be) pending before such juror, or the jury of which he may become a member, and
2. That the accused did so attempt to influence said juror by means of written or oral communication.

Note:

Nothing in this section shall be construed to prohibit the communication of a request to appear before the grand jury, or other communication authorized by the court.

Penalty:

Imprisonment for not more than 6 months, or a fine of not more than \$500, or both.

MISPRISON OF FELONY

Misdemeanor

§17-25-30/Common Law
CDR Code 0781

Elements Of the Offense:

1. (a) That the accused did criminally neglect to prevent a felony from being committed.

OR

- (b) That the accused did criminally neglect to bring the felon to justice after the commission of the felony.

2. That there was not such previous contact or concert with or assistance of the felon as to make the accused an accessory before or after the fact.

Note:

Mere silence or failure to come forward is not enough to constitute misprison; there must be some positive act of concealment of the felony.

Penalty:

See §17-25-30.

OFFERING BRIBES

Class F Felony

Code §16-9-210
CDR Code 262

Elements Of the Offense:

1. That the accused did corruptly offer, give, or promise a gift or gratuity to an official, and
2. That his intent was to influence the act, decision or judgment of said person, and
3. That the act, decision or judgment was to be in an official proceeding and the person to whom the gift or gratuity was given or offered was acting or was to act in his official capacity.

Penalty:

Imprisonment for not more than 5 years; or a fine of not more than \$3,000 and imprisonment for not more than 1 year.

PERJURY AND SUBORDINATION OF PERJURY

Class F Felony

Code §§16-9-10 and 16-9-30
CDR Codes 2377, 1157-1158, 2378 & 507

Elements Of The Offense:

- (1) That the accused willfully gave false, misleading, or incomplete testimony under oath in any court of record, judicial, administrative, or regulatory proceeding in this State.

OR

- (2) That the accused willfully gave false, misleading, or incomplete information on a document, record, report, or form required by the laws of this State.

Note:

For subordination of perjury in civil actions, see §16-9-20.

As an alternative, a magistrate or municipal judge may charge an individual with perjury under §16-9-30. Under this section, one may commit perjury by merely:

1. Wilfully and knowingly swearing falsely,
2. in taking any oath required by law,
3. administered by any person directed or permitted by law to administer an oath.

Penalty:

For violating (1) above - Imprisonment for not more than 5 years, or a fine in the discretion of the court, or both.

For violating (2) above - Imprisonment for not more than 6 months, or a fine of not less than \$100, or both.

REFUSAL OR FAILURE TO OBEY SUBPOENA
REFUSAL TO TAKE OATH OR TESTIFY

Misdemeanor

Code §16-9-330
CDR Codes 298-299

Elements Of the Offense:

- A. That the accused was duly served with a legal subpoena issued by any court or legal authority, with regard to any matter pending before it, and
- a. refused or willfully failed to obey such subpoena, or
 - b. did conceal himself.

OR

- B. That the accused was before any court, and
- a. was called upon to give testimony and refused to take an oath or affirmation, or
 - b. being sworn or affirmed, refused to answer any questions by such court.

Note:

Nothing in this section shall be construed to prohibit or punish the exercise of the constitutional right not to incriminate oneself.

Penalty:

Imprisonment for not more than 6 months, or a fine of not less than \$100 nor more than \$500, or both.

RESISTING ARREST OR SERVICE

Class E Felony or Class C Misdemeanor

Code §16-9-320
CDR Codes 326, 256

Elements Of the Offense:

- A. 1. That the accused did knowingly and willfully;
 - a. oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute, a legal writ or process, or
 - b. resist an arrest when being made by one whom the person knows or reasonably should know is a law enforcement officer, whether with or without a warrant.
- B. 1. That the accused did knowingly and willfully;
 - a. assault, beat or wound a law enforcement officer who was serving or executing, or attempting to serve or execute, a legal writ or process, or
 - b. assault, beat or wound an officer while the accused was resisting a lawful arrest, whether such arrest was with or without a warrant.

Penalty:

For violating "A" above - Fine of not less than \$500 nor more than \$1,000 or imprisonment for not more than 1 year, or both.

For violating "B" above - Fine of not less than \$1,000 nor more than \$10,000 or imprisonment for not more than 10 years, or both.

THREATENING JUDGE, JUROR OR WITNESS

Class F Felony

Code §16-9-340
CDR Code 2451

Elements Of the Offense:

- 1. That the accused did by threat or force, intimidate or impede any judge, magistrate, juror, witness, potential juror, potential witness, arbiter, commissioner, or member of any commission of this State in the discharge of his duty.

OR

- 2. That the accused did by threat or force destroy, impede, or attempt to obstruct or impede the administration of justice in any court.

Penalty:

Imprisonment for not more than 10 years, or a fine of not more than \$10,000, or both.

**WILLFUL FAILURE TO APPEAR IN COMPLIANCE WITH
UNIFORM TRAFFIC TICKET**

Misdemeanor

Code §56-25-40(b)
CDR Code 2192

Elements Of the Offense:

1. That the accused did willfully fail to appear before a court as required by a uniform traffic ticket, without
 - a. having posted such bond as required by the court, or
 - b. having been granted a continuance by the court.

Penalty:

Fine of not more than \$200 or imprisonment for not more than 30 days.

H.
Offenses Against Public Policy

BLACKMAIL

Class E Felony

Code §16-17-640
CDR Code 30

Elements Of The Offense:

1. That the accused attempted to, threatened to, or did verbally, in print, or in writing or by electronic communications:
 - a. Accuse another of a crime or offense;
 - b. Expose or publish any of another's personal or business acts, infirmities or failings;
 - c. Compel any person to do any act, or to refrain from doing any lawful act, against his will, and
2. That the intent of the accused was to extort money or any other thing of value from the person.
3. That his act, decision or judgment was for the benefit of the donor.

Penalty:

Fine of not more than \$5,000 or imprisonment for not more than 10 years, or both.

COCKFIGHTING

Unclassified Misdemeanor

Code §16-17-650
CDR Code 619

Elements Of The Offense:

1. (a) That the accused did engage in cockfighting in this State.

OR

- (b) That the accused was present at a cockfight in this State.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days.

CONTRIBUTING TO THE DELINQUENCY OF A MINOR

Class A Misdemeanor

Code §16-17-490
CDR Code 48

Elements Of The Offense:

1. That the accused was over eighteen years of age, and
2. That the accused did willfully encourage, aid or cause or did an act to cause or influence a minor to: (one or more of the following)
 - a. Violate any law or municipal ordinance.
 - b. Become and be incorrigible or ungovernable, habitually disobedient, and beyond the control of parents, guardian or lawful authority.
 - c. Become and be habitually truant.
 - d. Repeatedly desert his home without consent or just cause.
 - e. Engage in an occupation in violation of the law.
 - f. Associate with immoral or vicious persons.
 - g. Frequent any place the existence of which is against the law.
 - h. Habitually use obscene or profane language.
 - i. Beg or solicit alms in any public place under any pretense.
 - j. Deport himself as to wilfully injure or endanger his morals or health of others.

Penalty:

Fine of not more than \$3,000 or imprisonment of not more than 3 years, or both.

DESTRUCTION OR DESECRATION OF HUMAN REMAINS

Misdemeanor, Class E or F Felony

Code §16-17-600
CDR Codes 471-473, 429

Elements Of The Offense:

- A. 1. That the accused willfully and knowingly,
- a. Destroyed or damaged the remains of a deceased human being;
 - b. Removed a portion of the remains of a deceased human being from a burial ground where human skeletal remains are buried;
 - c. Desecrated human remains.

OR

- B. 2. That the accused willfully and knowingly,
- a. Obliterated, vandalized, or desecrated a burial ground where human skeletal remains are buried,
 - b. Defaced, vandalized, injured, or removed a gravestone or other memorial monument,
 - c. Obliterated, vandalized, or desecrated a park or other area clearly designed to preserve the memory of a deceased person.
- C. 3. That the accused willfully and knowingly,
- a. stole anything of value located upon or around a repository for human remains or within a human graveyard, cemetery, or memorial park; OR
 - b. destroyed, tore down, or injured fencing, plants, trees, shrubs, or flowers located upon or around a repository for human remains or graveyard.

Penalty:

For violating "A" above - Felony - Fine of not more than \$5,000 or imprisonment of not less than 1 year nor more than 10 years, or both.

For violating "B" above - Felony - Fine of not more than \$5,000 or imprisonment for not more than 10 years, or both.

For violating "C" above - Felony - Fine of not more than \$5,000 or imprisonment for not more than 5 years, or both.

If the violation of "C" is less than \$200, the offense is triable in magistrate's court and is punishable by a fine or imprisonment of not more than is permitted by law without presentment or indictment by the grand jury (\$500 or 30 days), and the person must be required to perform up to 250 hours of community service in an amount to be determined by the court.

If the violation of "C" is \$200 or more-Felony- Fine of not more than \$5000 or imprisonment for not more than 5 years, or both, and must be required to perform not more than 500 hours of community service.

DISTURBING SCHOOLS

Unclassified Misdemeanor

Code §16-17-420

CDR Code 331

Elements Of The Offense:

1. (a) That the accused wilfully and unnecessarily interfered with or disturbed the students or teachers of any school or college.

OR

(b) That the accused did loiter about such school or college premises.

OR

(c) That the accused did act in an obnoxious matter.

OR

(d) That the accused did enter upon any school or college premises or did loiter upon same without the permission of the principal or president in charge.

Penalty:

Fine of not less than \$100 nor more than \$1,000 or imprisonment of not less than 30 days nor more than 90 days.

IMPERSONATING LAW-ENFORCEMENT OFFICER

Class C Misdemeanor

Code §16-17-720
CDR Code 88

Elements Of The Offense:

1. That the accused did represent to another that he was a law-enforcement officer, and acting upon such representation, did arrest or detain another, or did search any building or automobile, or did in any way impersonate a law-enforcement officer.

Note:

Nothing herein prohibits a private citizen from making a citizen's arrest in accordance with the laws of this State.

Penalty:

Fine of not more than \$500 or imprisonment for not more than 1 year.

INTERFERENCE WITH FIRE AND POLICE ALARM BOXES

Unclassified Misdemeanor

Code §16-17-570
CDR Code 309

Elements Of The Offense:

1. That the accused did willfully, maliciously or mischievously interfere with, or did cut or injure any pole, wire, insulator or alarm box, or did give a false alarm from such box, or did break the glass in such box of any fire or police system within this State.

Penalty:

Fine of not more than \$200 or imprisonment for not less than 60 days.

"PEEPING TOM" - EAVESDROPPING

Class A Misdemeanor

Code §16-17-470(A)
CDR Code 120

Elements Of The Offense:

1. That the accused was an eavesdropper or a peeping tom on or about the premises of another or did go about the premises for that purpose; or
2. That the accused did use video or audio equipment for the purpose as peeping through windows, doors, or other like place, on or about the premises of another, for the purpose of spying upon or invading the privacy of another.

Note:

This section is not applicable to law officers performing their official duties. (See §16-17-480).

Penalty:

Fine of not more than \$500 or imprisonment for not more than 3 years, or both.

PUBLIC DISORDERLY CONDUCT

Unclassified Misdemeanor

Code §16-17-530
CDR Code 622

Elements Of The Offense:

1. (a) That the accused was found on any highway or at any public place or public gathering in a grossly intoxicated condition or was conducting himself in a disorderly or boisterous manner.

OR

- (b) That the accused did use obscene or profane language on any highway, public place, gathering, or in hearing distance of any church or schoolhouse.

OR

- (c) That the accused, while under the influence of intoxicating liquor or feigning to be, without just cause or excuse, did discharge a gun, pistol or other firearm while upon or within fifty yards of a public road or highway, and not on his own premises.

Note:

§§56-5-2930 and 56-5-2940 pertain to driving under the influence of intoxicating liquors and other drugs.

Penalty:

Fine of not more than \$100 or imprisonment of not more than 30 days.

"SCALPING"

Unclassified Misdemeanor

Code §16-17-710
CDR Code 643

Elements Of The Offense:

1. That the accused did sell or offer for sale a ticket good for admission to any

athletic contest, sporting, entertainment, or amusement event where an admission price is charged, and did request or receive a price in excess of one dollar of the price charged by the original seller.

Note:

The sale or offer of sale of each ticket shall constitute a separate offense.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 30 days.

UNLAWFUL PURCHASE OR TRANSPORTATION OF COPPER WIRE OR PIPE

Class C Misdemeanor

Code §16-17-680
CDR Code 1221-1222, 270

Elements Of The Offense:

- A. 1. That the accused did purchase copper wire, copper pipe, copper bars, or copper sheeting in excess of ten pounds from another person, and
2. That the person who sold the copper did not possess a retail license, was not an authorized wholesaler, or
3. That the accused did not obtain and verify the name and address of the seller.

OR

- B. 1. That the accused did transport or have in his possession on public highways, in any vehicle other than one normally used in business for transporting copper wire, copper pipe, copper bars, or copper sheeting, with the aggregate weight of such copper being more than twenty-five pounds, unless he has:
 - a. a bill of sale from (1) a licensed retailer of copper pipe or wire; or (2) an authorized wholesaler of such goods; or (3) a registered dealer in scrap metals; or
 - b. a certificate of origin signed by the sheriff of the county in which the goods were purchased.

Note:

Records kept by a purchaser of copper must be maintained and kept open for inspection by law enforcement officials or local and state governmental agencies.

Penalty:

First offense - fine of not more than \$200 or imprisonment for not more than 30 days.

Second offense - fine of not more than \$500 or imprisonment for not more than 1 year, or both.

Third or subsequent offense - fine of not more than \$1,000 or imprisonment of not more than 3 years, or both.

UNLAWFUL TO TRANSPORT CHILD OUTSIDE STATE TO VIOLATE CUSTODY ORDER

Class A Misdemeanor

Code §16-17-495
CDR Code 338, 2522, 2523

Elements Of The Offense:

- (A) (1) That the accused did willfully take, transport, or cause to be taken or transported a child under the age of 16 from the legal custodial for the purpose of concealing the child, or circumventing or avoiding the custody order established by a court of this State or another State or established pursuant to Section 20-7-953B.
- (2) That the accused did willfully take or transport, or cause to be taken or transported a child under the age of 16 when a pleading has been filed and served seeking a determination of the custody of the child for the purpose of concealing the child, or circumventing or avoiding the custody proceeding.

Note:

This section applies to "anyone" including parents, but requires the element of intent to violate the custody order. If a person keeps a child outside the state for more than 72 hours, it is permissible to infer that the person intended to commit this violation.

Penalty:

Subsection (A)(1) or (2) - Felony - Fine in the discretion of the court or imprisoned not more than 5 years, or both.

Subsection (A)(1) or (2) - Child returned to legal custodian or to court in which custody petition filed within 3 days of violation - Misdemeanor - Fine in discretion of court or imprisoned not more than 3 years, or both.

Note:

If the taking or transporting of the child in violation of subsections (A)(1) or (2) is by physical force or the threat of physical force, the person is guilty of a felony.

Penalty:

Fine in discretion of court or imprisoned not more than 10 years, or both.

Note:

Person who violates the provisions of section may be required by the court to pay necessary travel and other reasonable expenses, including attorney's fees incurred by the party entitled to the custody of the child or by a witness or law enforcement.

UNLAWFUL USES OF TELEPHONE

Unclassified Misdemeanor

Code §16-17-430
CDR Code 87, 646

Elements Of The Offense:

1. That the accused did anonymously or otherwise: (any one of the following)
 - a. Use in a telephonic communication or any other electronic means any words or language of a profane, vulgar, lewd, lascivious or indecent nature, or threaten any unlawful act with the intent to coerce, intimidate, or harass another person, or convey by telephone or other electronic means an obscene, vulgar, indecent, profane, suggestive, or immoral message to another person.
 - b. Telephone or electronically contact another repeatedly, regardless of whether or not conversation ensues for the purpose of annoying or harassing another person or his family.
 - c. Make a telephone call and intentionally fail to hang up or disengage the connection in order to interfere with the phone service of another.
 - d. Telephone or contact by electronic means another and make false statements concerning the death or injury of any family member of the person called with the intent to annoy or frighten that person.
 - e. Knowingly permit a telephone under his control to be used for any of the prohibited purposes listed above.

Penalty:

For violations of any of the above - Fine in the amount of not less than \$100.00 nor more than \$500.00 or imprisonment for not more than 30 days.

VOYEURISM

Class A Misdemeanor, Class E and F Felony

Code §16-17-470(B), (C)
CDR Code 2865-2867

Elements of the Offense:

- (B) That the accused did for the purpose of arousing or gratifying sexual desire of any person, knowingly views, photographs, audio records, video records, produces, or creates a digital electronic file, or films another person, without that person's knowledge and consent, while the person is in a place where he or she would have a reasonable expectation of privacy.
- (C) That the accused did knowingly sell or distribute any photograph, audio recording, video recording, digital electronic file, or film of another person taken or made without that person's knowledge or consent.

Penalty:

Violation of subsection B above - First Offense - Fine of not more than \$500 or imprisoned

not more than 3 years, or both.

Violation of subsection B above - Second or Subsequent offense - Fine not less than \$500. or more than \$5,000 or imprisoned not more than 5 years, or both.

Violation of subsection C above - Fine of not less than \$500 or more than \$5,000 or imprisoned not more than 10 years, or both.

Note:

This section is not applicable to law officers performing their official duties. (See Section 16-17-480).

I.
Offenses Involving Weapons

CARRYING CONCEALED WEAPONS

Unclassified Misdemeanor

Code §16-23-460
CDR Code 43

Elements Of The Offense:

1. That the accused did carry on his person a concealed, deadly weapon.
2. That the weapon was such as is usually used to inflict personal injury.

Note:

This section does not apply to persons carrying concealed weapons in compliance with the "Law Abiding Citizens Self-Defense Act of 1996." (S.C. Code Ann. §23-31-205 et.seq.); or peace officers in the discharge of their duties.

This section does not apply to rifles, shotguns, dirks, slingshots, metal knuckles or razors unless they are used with the intent to commit a crime or in furtherance of a crime.

Penalty:

Fine of not more than \$500 nor less than \$200, or imprisonment for not more than 90 days nor less than 30 days. Also, the concealed weapon must be forfeited to the county (or city).

CARRYING A HANDGUN

Class C Misdemeanor

Code §16-23-20
CDR Code 44

Elements Of The Offense:

1. That the accused did carry a handgun about his person and that the accused was not:
 - a. on duty as a law enforcement officer of any governmental level.
 - b. a member of the Armed Forces, National, or State militia.
 - c. Target shooting or gun collecting as a member of a club.
 - d. Hunting or fishing with a license in a licensed area.
 - e. A person engaged in the business of manufacturing, repairing, or dealing in firearms or his agent, during the usual course of business.
 - f. A guard authorized by law to possess handguns and engaged in protection of property of the United States or any agency of the United States
 - g. A member of an authorized military or civil organization in an authorized parade or assembly, or going to or returning from such meeting.
 - h. A person in his home or upon his real property or a person who has the

- permission of the owner in legal control of the home or real property
- i. A person in a vehicle where the handgun is secured in a closed glove compartment or closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle; however, this item is not violated if the glove compartment, console, or trunk is opened in the presence of a law enforcement officer for the sole purpose of retrieving a drivers license, registration, or proof of insurance.
 - j. A person carrying an unloaded handgun in a secure wrapper from the place of purchase to his home or fixed place of business or while in the process of changing or moving his residence or changing or moving his fixed place of business;
 - k. A prison guard performing official duties.
 - l. A person granted a SLED permit to carry a handgun.
 - m. The owner or the person in legal possession or the person in legal control of a fixed place of business, while at the fixed place of business, and the employee of a fixed place of business, other than a business subject to §16-23-465, while at the place of business; however, the employee must exercise this privilege only after acquiring 1) a permit pursuant to item "l" above and 2) obtaining the permission of the owner or person in legal control or legal possession of the premises.
 - n. A person engaged in firearms-related activities while on the premises of a fixed place of business which conducts, as a regular course of its business, activities related to sale, repair, pawn, firearms training, or use of firearms, unless the premises is posted with a sign limiting possession of firearms to holders of permits to item "l" above.
 - o. A person while transferring a handgun directly from or to a vehicle and a location specified in this section where one may legally possess the handgun.
 - p. Any person on a motorcycle when a handgun is secured in a closed saddlebag or other similar closed accessory container attached, whether permanently or temporarily, to the motorcycle.

Note:

A handgun is about the person if it is readily accessible and convenient for immediate use. It does not have to be touching the person. Special attention should be given to paragraph "i" of this section which stipulates that the proper place to carry a pistol in a vehicle is in a closed glove compartment or trunk. See §16-23-465 for penalties for carrying a pistol or firearm into a business selling alcoholic liquors, beers, or wines for on the premises consumption.

Penalty:

Fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

See Section 16-23-50 (A)(2).

CARRYING WEAPONS ON SCHOOL PROPERTY

Elements Of The Offense:

1. That the accused was not state, county, or municipal law-enforcement officer, nor a person authorized by school officials, and
2. That the accused while on any elementary or secondary school property did carry a knife, with a blade over two inches long, a blackjack, metal pipe or pole, firearms or any other type of weapon, device or object which may be used to inflict bodily harm or death.

Note:

If the accused is a child under the age of 17, the family court has exclusive jurisdiction.

Penalty:

Fine of not more than \$1,000 or imprisonment for not more than 5 years, or both. Also, the weapon or object used may be confiscated.

**DISCHARGING FIREARMS AT OR INTO DWELLING,
VEHICLE, AIRCRAFT, WATERCRAFT, OR OTHER CONVEYANCE**

Class E Felony

Code §16-23-440
CDR Code 52

Elements Of The Offense:

1. That the accused unlawfully discharged or caused to be discharged firearms at or into a dwelling or building usually occupied by persons.

OR

2. That the accused unlawfully discharged or caused to be discharged firearms at or into any vehicle, aircraft, watercraft, or other conveyance, device, or equipment while it was occupied.

Penalty:

Fine of not more than \$1,000 or imprisonment of not more than 10 years, or both.

FALSE INFORMATION ON LICENSE APPLICATION

Class F Felony

Code §23-31-160
CDR Code 311

Elements Of The Offense:

1. That the accused did apply for a license to be a retail dealer in the sale, offering for sale, or possession with intent to sell, or otherwise transfer a pistol under §23-31-130.
2. That the accused did give "false information or evidence regarding any information or evidence" in matters concerning license application.

Penalty:

Fine of not more than \$2,000 or imprisonment of not more than 5 years, or both.

See Section 23-31-190.

FIRE BOMBS

Class F Felony

Code §16-23-480
CDR Code 346

Elements Of The Offense:

1. That the accused manufactured or caused to be manufactured, or possessed an object or article designed to cause damage by fire or other means to person or property, either by ignition, detonation or other means.

Penalty:

Fine in the discretion of the court or imprisonment for not more than 5 years, or both.

FIREARMS IN PUBLIC BUILDINGS

Class F Felony

Code §16-23-420
CDR Code 300

Elements Of The Offense:

1. (a) That the accused did carry onto any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or any publicly owned building, a firearm without the express permission of the authorities in charge of the premises or property.

OR

- (b) That the accused had in his possession a firearm while in the area immediately adjacent to such buildings.

OR

- (c) That the accused did display, brandish or threaten others with a firearm while

in these buildings or in the immediately adjacent areas.

Note:

Persons exempted from application of this section include guards, law enforcement officers, members of armed forces, students of military science, or authorized named resident of student housing provided by public or private school.

Penalty:

Fine of not more than \$5,000 or imprisonment for not more than 5 years, or both.

ILLEGAL POSSESSION OF TEAR GAS GUN

Class A Misdemeanor

Code §16-23-470
CDR Code 335

Elements Of The Offense:

1. That the accused did possess, use, transport, sell or buy any tear-gas machine or gun or any part thereof, or any ammunition or shells or equipment to be used in that machine or gun, and
2. That the accused was not a duly authorized law-enforcement officer.

Note:

This section does not prohibit the use of tear gas for the destruction of insects or rodents, provided the gas is not in containers suitable for use in a tear gas gun, and the user has written permission from the county agent for such use.

Penalty:

Fine of not more than \$5,000 or imprisonment of not more than 3 years, or both.

MACHINE GUNS, MILITARY FIREARMS, SAWED-OFF SHOTGUNS AND RIFLES

Class E Felony

Code §§16-23-220 to 16-23-240
CDR Codes 314-316

Elements Of The Offense:

1. That the accused did in any manner transport from one point to another in this state (or for any common carrier to knowingly ship or transport) machine guns, military firearms, sawed-off shotguns or rifles. (Section 16-23-220).

OR

2. That the accused did, or did permit another, to store, keep, possess, or have in

his possession machine guns, military firearms, sawed-off shotguns or rifles. (§16-23-230).

OR

3. That the accused did participate directly or indirectly, in the selling, renting, giving away, or otherwise disposing of machine guns, military firearms, sawed-off shotguns or rifles. (§16-23-240).

Note:

Exceptions to the above provisions pertaining to such firearms are provided in §16-23-250. §23-31-330 provides for the registration of persons authorized to possess such weapons. §16-23-210 defines the weapons.

Penalty:

Fine of not more than \$10,000 or imprisonment of not more than 10 years, or both. (§16-23-260).

PLACING LOADED TRAP GUN OR SPRING GUN

Class C Misdemeanor

Code §16-23-450
CDR Code 339

Elements Of The Offense:

1. That the accused did construct, set or place a loaded trap gun, spring gun, or like device in any building or any place in the state.

Penalty:

Fine of not less than \$100 nor more than \$500 or imprisonment of not less than 30 days nor more than 1 year, or both.

POINTING FIREARM AT A PERSON

Class F Felony

Code §16-23-410
CDR Code 122

Elements Of The Offense:

1. That the accused did point a firearm at another person.

Note:

This section does not distinguish between a loaded and an unloaded firearm. This section does not abridge the right of self-defense or apply to theatricals or like performances.

Penalty:

Fine in the discretion of the court or imprisonment of not more than 5 years.

**RESISTING ARREST WITH USE OR
THREAT OF USE OF A DEADLY WEAPON**

Class E Felony

Code §16-3-625
CDR Code 2352

Elements Of The Offense:

1. That the accused resisted the lawful efforts of a law enforcement officer to arrest him or any other person, and
2. That in so doing, the accused used, or threatened to use a deadly weapon, and
3. a. the accused was in possession of a deadly weapon, or
b. the accused claimed to be in possession of a deadly weapon.

Note:

"Deadly weapon" means any instrument which can be used to inflict deadly force.

Penalty:

Imprisonment for not more than 10 years nor less than 2 years.

SALE OR DELIVERY OF PISTOL; POSSESSION BY CERTAIN PERSONS; STOLEN PISTOLS

Class F Felony

Code §16-23-30
CDR Code 2364

Elements Of The Offense:

- A. 1. That the accused did knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into the state any handgun to:
 - a. Any person convicted of a crime of violence, a fugitive from justice, a habitual drunkard, a drug addict, or one adjudicated mentally incompetent, or
 - b. Any person who is a member of a subversive organization, or
 - c. Any person under twenty-one, except when on any type of military duty or training, or
 - d. Any person adjudged by court order unfit to carry or possess a handgun.

OR

- B. 1. That a person falling within "a", "b", "c", or "d" above did possess or acquire handguns within the State.

OR

- C. 1. That the accused did knowingly buy, sell, transport, pawn, receive or possess any stolen handgun or one which has had the serial number obliterated or removed.

Penalty:

In addition to seizure of handgun; fine of not more than \$2,000 or imprisonment for not more than 5 years, or both. [§16-23-50 (A)(2)].

J.
Poisons, Drugs, and Other Controlled Substances

1. Generally

The Department of Health and Environmental Control has the responsibility of forming rules and regulations concerning all aspects of controlled substances as defined in Title 44, Chapter 53 of the 1976 Code. SLED shall have the primary responsibility of enforcing the rules of the Department pertaining to controlled substances and shall cooperate with all State and Federal agencies which have similar responsibilities.

The Department has established schedules listing certain substances which are to be controlled. The schedules have been established and divided on the criteria of: potential for abuse of the substance; possible medical use in treatment; and considerations of the effects of the use of such substances. Substances which the Department deems extremely dangerous are listed in Schedule I, less dangerous substances in Schedule II, etc. There are five such schedules found in §§44-53-190, 210, 230, 250, and 270.

The most common and important laws and penalties for violations thereof are discussed under their appropriate code section designations. For definitions of terms used in this chapter, refer to §44-53-110. Special note should be taken of §44-53-500 which describes the procedure for issuance and execution of administrative inspection warrants, and §44-53-570 which deals with service of search warrants, day or night. Also note §44-53-450 which deals with conditional discharge for first offenses under this chapter.

Chapter 53 of the 1976 Code is a complicated section which should be closely examined for final authority on all drug related matters. The following discussion of the various offenses in Chapter 53 has been simplified as much as possible so as to give an understandable overview of the subject.

AROMATIC HYDROCARBONS (GLUE SNIFFING)

Unclassified Misdemeanor

Code §44-53-1110
CDR Code 0632

Elements Of The Offense:

1. That the accused did intentionally smell or inhale the fumes from any substance containing aromatic hydrocarbons, and
2. That the smelling or inhaling was done for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system.

Note:

This section should not be interpreted as applying to the inhalation of any anesthesia for medical or dental purposes.

The accused must smell the substance with the intent of causing one of the conditions in "2" above. It would not be a violation if one of the conditions listed occurred as a result of merely working with or around a substance such as glue, paint thinner, or any other

substance containing aromatic hydrocarbons.

Penalty:

Fine of not more than \$100, or imprisonment for not more than 30 days. (§44-53-1130).

CONDITIONAL DISCHARGE FOR FIRST OFFENSE

Code §44-53-450

- A. Whenever any person who has not previously been convicted in this state or any other state for violations of laws relating to marijuana or other non-narcotic drugs (narcotic drugs are found in Schedule I (b) and (c) of §44-53-190 and Schedule II, §44-53-230) pleads guilty to or is found guilty of possession of a controlled substance (see §44-53-370), the court, without entering a judgment and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions which the court deems appropriate. If these terms and conditions are violated, the court may enter an adjudication of guilt and proceed accordingly. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section may occur only once with respect to any person.
- B. Upon dismissal or discharge under this section, the accused, if under the age of 25 at the time of the offense, may apply to the court for an order to remove from all official records any mention of his arrest and the subsequent proceedings. The effect of such an order, if granted, shall be to restore such person, in the eyes of the law, to the status he occupied before such arrest.

DISTRIBUTION TO PERSONS UNDER EIGHTEEN

Class C or E Felony

Code §44-53-440
CDR Codes 293, 2363

Elements Of The Offense:

- A. 1. That the accused was eighteen years of age or over, and
- 2. That the accused did distribute a narcotic drug or LSD or crack cocaine to a person under eighteen years of age,

OR

- B. 1. That the accused was eighteen years of age or over, and
- 2. That the accused did distribute any controlled substance other than a narcotic drug or LSD to a person under eighteen years of age.

Penalty:

For violating "A" above - Fine not to exceed \$30,000, or imprisonment for not more than 20 years, or both. The sentence may not be suspended and probation may not be granted.

For violating "B" above - Fine of not more than \$10,000, or imprisonment for not more than 10 years, or both.

DISTRIBUTION WITHIN PROXIMITY OF SCHOOL

Class E Felony or Class C Misdemeanor

Code §44-53-445
CDR Codes 107-108, 892

Elements Of The Offense:

1. That the accused did distribute, sell, purchase, manufacture, or unlawfully possess with intent to distribute a controlled substance.
2. That the offense occurred within a one-half mile radius of the grounds of a public or private elementary, middle, or secondary school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university.

Penalty:

Fine not to exceed \$10,000, or imprisonment for not more than 10 years, or both.

When the violation involves the distribution, sale, manufacture, or possession with intent to distribute crack cocaine -Fine not to exceed \$10,000 and imprisonment for not less than 10 years nor more than 15 years.

When the violation involves only the purchase of a controlled substance, including crack cocaine-Fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

**POSSESSION, MANUFACTURE, AND TRAFFICKING;
METHAMPHETAMINE AND COCAINE BASE**

Felony

Code §44-53-375(B)
CDR Codes 112 -114

Element Of The Offense:

1. That the accused manufactured, distributed, dispensed, delivered, purchased or possessed with the intent to distribute, dispense, OR deliver methamphetamine or cocaine base. Possession of one or more grams is prima facie evidence of a violation.

Penalty:

1st offense - fine of not more than \$25,000 or imprisonment for not more than 15 years, or both.

2nd offense, or if the offender has been convicted of 1 or more offense relating to narcotic drugs - fine of not more than \$50,000 or imprisonment for not less than 5 years nor more than 30 years, or both.

3rd or subsequent offense, or if the offender has been convicted of 2 or more offenses relating to narcotic drugs - fine of not more than \$50,000 dollars or imprisonment for not less than 15 years nor more than 30 years, or both.

**OBTAINING CERTAIN DRUGS, PREPARATIONS OR COMPOUNDS
BY FRAUD, DECEIT, ETC.**

Class B Misdemeanor, Class F Felony

Code §44-53-40
CDR Codes 296-297

Elements Of The Offense:

1. That the accused did obtain, or attempt to obtain, "a drug or device as defined by §39-23-20. . ." or any pharmaceutical preparation, chemical, chemical compound restricted to sale at retail, and
2. That such substances were obtained by:
 - a. fraud, deceit, misrepresentation, or subterfuge, or
 - b. the forgery or alteration of a prescription, or
 - c. by falsification in any manner of any record of sale required by law.
 - d. the use of a false name or address, or
 - e. the concealment of a material fact, or
 - f. falsely assuming the title of or representing himself to be a person authorized by the laws of this State to possess such substances.

Note:

No person shall be convicted under this section unless it is shown by clear and convincing evidence that the substance obtained would not have been obtained but for the fraud, deceit, etc. practiced by the accused.

Penalty:

1st offense - Fine not to exceed \$500, or imprisonment for not more than 2 years, or both.

2nd or subsequent offense - Fine of not more than \$2,000 or imprisonment for not more than 5 years, or both.

**POSSESSION OF CERTAIN QUANTITIES OF CONTROLLED
SUBSTANCES AS EVIDENCE OF INTENT TO DISTRIBUTE**

Unclassified and Class C Misdemeanor

Code §44-53-370(d)(4)
CDR Codes 182, 659

- A. It shall be prima facie evidence of intent to distribute, (which violates §44-53-370 (a)) for any person to possess more than:
 - a. ten grains of cocaine
 - b. one hundred milligrams of alpha-or beta-eucaine
 - c. four grains of opium

- d. four grains of morphine
- e. two grains of heroin
- f. one hundred milligrams of isonipecaine
- g. twenty-eight grams (1 ounce) of marijuana
- h. ten grams of hashish
- i. fifty micrograms of LSD or its compounds
- j. twenty milliliters or milligrams of gamma hydroxybutyric acid or a controlled substance analogue of gamma hydroxybutyric acid

POSSESSION OF METHAPHETAMINE OR COCAINE BASE

Class A Misdemeanor, Class E, F Felony

Code §44-53-375(A)
CDR Codes 3009, 3016-3017

Elements Of The Offense:

1. That the accused possessed less than one gram of methamphetamine or cocaine base.

Penalty:

1st offense - fine of not more than \$5,000 or imprisonment for not more than 3 years, or both.

2nd offense - fine of not more than \$7,500 or imprisonment for not more than 5 years, or both.

3rd or subsequent offense - fine of not more than \$12,500 or imprisonment for not more than 10 years, or both.

POSSESSION OF SMALL QUANTITIES OF MARIJUANA OR HASHISH

Class B or C Misdemeanor

Code §44-53-370(d)(4)
CDR Codes 182, 659

Elements Of The Offense

1. That the accused possessed twenty-eight grams or less of marijuana or ten grams or less of hashish.

Penalty

1st offense - fine not less than \$100 nor more than \$200 or imprisonment for a term not to exceed 30 days. Also, suspension of driver's license for a period of 6 months. If the person does not have a driver's license, one shall not be issued for a period of six months after the person is eligible for the issuance of a driver's license.

2nd or subsequent offense - fine not less than \$200 nor more than \$1,000 or

imprisonment for not more than 1 year, or both. The persons driver's license should be suspended for an additional 6 months for each subsequent offense, such suspensions to run consecutively and not commencing until the expiration of the suspension for the prior offense (See §56-1-745).

**PROHIBITED ACTS A: POSSESSION AND DISTRIBUTION
OF CONTROLLED SUBSTANCES**

Classification Dependent Upon Substance

Code §44-53-370

Elements Of The Offense:

1. (a) That the accused, without authorization, did manufacture, distribute, or possess with intent to distribute, a controlled or counterfeit substance.

OR

- (b) That the accused did knowingly possess a controlled substance without authority.

Note:

A controlled substance means a drug, substance, or immediate precursor in Schedules I through V in §§44-53-190, 210, 230, 250, and 270.

A counterfeit substance is a controlled substance or its container which bears the trademark, trade name, or other identifying mark of a manufacturer or distributor so as to falsely purport to be the product of said manufacturer or distributor.

Penalty:

Penalties for violating this section are dependent on the type of substance involved and the number of offenses against the accused. Refer to this Code section for appropriate remedies for each particular case. The following are a few examples of first offense penalties for manufacture or distribution:

1. Narcotic drug or LSD: imprisonment for not more than 15 years or a fine of not more than \$25,000, or both. §44-53-370(b)(1).
2. Substances, other than narcotics or LSD, in Schedule I, II, or III: imprisonment for not more than five years or a fine of not more than \$5,000, or both. §44-53-370(b)(2).
3. Substances in Schedule IV: imprisonment for not more than 3 years or a fine of not more than \$3,000, or both. §44-53-370(b)(3).
4. Substances in Schedule V: imprisonment for not more than 1 year or a fine of not more than \$1,000, or both. §44-53-370(b)(4).

First offense penalties for simple possession of controlled substances:

1. Narcotics or LSD: imprisonment for not more than 2 years or fine of not more than

\$5,000, or both. §44-53-370(d)(1).

2. Substances in Schedules I through V, which are not narcotics or LSD: imprisonment for not more than 6 months or fine of not more than \$1,000, or both. §44-53-370(d)(2).

PROHIBITED ACTS B: LICENSED DISTRIBUTORS

Misdemeanor

Code §44-53-380
CDR Code 295

Elements Of The Offense:

1. That the accused was a licensed registrant, such as a pharmacist or drug manufacturer, (See §§44-53-280 to 44-53-360), and
2. (a) That the accused did distribute a controlled substance without a proper prescription (See §44-53-360), or
(b) That the accused did manufacture or distribute a controlled substance which he was not authorized to dispense, or
(c) That the accused did omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or this article, or
(d) That the accused did fail to keep or furnish any records or information required under this article (See §44-53-340), or
(e) That the accused did refuse any inspection authorized by this article (See §44-53-500), or
(f) That the accused did knowingly maintain any premises which were used to store illegally possessed substances or as a place for using such substances, or
(g) That the accused failed to register to manufacture or distribute controlled substances prior to his engaging in such manufacturing or distributing. (See §44-53-280).

Penalty:

Civil fine of not more than \$1,000, unless it is proved that the accused committed such violations knowingly or intentionally, in which case, imprisonment for not more than 5 years or a fine of not more than \$10,000. If the accused is a corporation, it shall be subject to a civil penalty of not more than \$100,000.

PROHIBITED ACTS C: DISTRIBUTION AND MANUFACTURE VIOLATIONS

Felony

Code §44-53-390
CDR Code 561

Elements Of The Offense:

1. That the accused did knowingly or intentionally do any of the following acts:
 - a. distribute as a licensed registrant (example, pharmacist) a controlled substance

classified in Schedules I or II (see §§44-53-190 and 44-53-210) without a proper order form. (See §44-53-350 for order form requirements).

- b. use a registration number which is fictitious, revoked, or issued to another person while manufacturing or distributing a controlled substance.
- c. illegally acquire a controlled substance by fraud or deception.
- d. fail to include material information or include false information in any reports or applications dealing with controlled substances.
- e. make or possess any instrument such as a punch or die designed to reproduce the trademark or other identifying mark of another manufacturer or distributor.

Penalty:

Fine of not more than \$10,000 or imprisonment for not more than 5 years, or both. If the person convicted is a corporation, it is subject to a civil penalty of not more than \$100,000.

**SALE, ETC. OF MISBRANDED PACKAGE OR CONTAINER
OR DANGEROUS CAUSTIC AND CORROSIVE SUBSTANCES**

Misdemeanor

Code §44-53-1220
CDR Code 272

Elements Of The Offense:

1. That the accused did sell, exchange, pack, display, or offer to sell, any dangerous caustic or corrosive substance, and
2. That the dangerous substance was in a misbranded parcel, package, or container designed for household use.

Note:

Dangerous caustic or corrosive substances are listed in §44-53-1210. Included are such substances as hydrochloric acid, sulfuric acid, carboic acid, silver nitrate, and ammonia water.

A misbranded parcel, package or container is defined in §44-53-1210. Essentially, such packages are those which do not bear a label giving the name of the substance it contains, the name and address of the manufacturer; a warning that such substances are poison, and directions for treatment in case of injury resulting from such substances.

Penalty:

Fine of not more than \$100 or imprisonment for not more than 90 days, or both. See §44-53-1250.

K. Financial Transaction Card Crime Act

1. Generally

This Act, embodied in S.C. Code Ann. §16-14-10 et.seq., concerns several crimes involving financial transaction cards, common known as credit cards and bank cards. This Act covers the following offenses:

- a. Financial transaction card theft (§16-14-20)
- b. Financial transaction card forgery (§16-14-40)
- c. Financial transaction card fraud (§16-14-60)
- d. Criminal possession of financial transaction card forgery devices (§16-14-70)
- e. Criminally receiving goods and services fraudulently obtained (§16-14-80)

The following is a brief outline of the Act. Consult the S.C. Code when dealing with any provision of the Act.

2. Penalties

None of these offenses is triable in magistrate or municipal court. Each offense, or degree thereof, included in the Act specifies punishment upon conviction as provided in either §16-14-100(a) or §16-14-100(b). §16-14-100(a) provides that crimes which are punishable thereunder are misdemeanors, and upon conviction, a defendant is subject to a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both. §16-14-100(b) provides that crimes which are punishable thereunder are felonies, and upon conviction, a defendant is subject to a fine of not less than \$3,000 nor more than \$5,000 or imprisonment for not more than 5 years, or both.

3. Financial Transaction Card (FTC)

"Financial transaction card" or "FTC" means any instrument or device whether known as a credit card, credit plate, bank services card, banking card, check guarantee card, debit card, or by any other name, issued with or without fee by an insurer for the use of the cardholder;

- (a) in obtaining money, goods, services, or anything of value on credit;
- (b) in certifying or guaranteeing to a person or business the availability to the cardholder of funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of such person or business;
- (c) in providing the cardholder access to a demand deposit account or time deposit account for the purpose of;
 1. making deposits of money or checks therein,
 2. withdrawing funds in the form of money, money orders, or traveler's checks therefrom,
 3. transferring funds from any demand deposit account or time deposit account to any other demand deposit account or time deposit account,
 4. transferring funds from any demand deposit account or time deposit account to any credit card accounts, overdraft privilege accounts, loan accounts, or any

- other credit accounts in full or partial satisfaction of any outstanding balance owed existing therein,
5. for the purchase of goods, services or anything else of value,
 6. obtaining information pertaining to any demand deposit account or time deposit account.

For definitions of other words and terms used in the Act, see S.C. Code Ann. §16-14-10.

4. Financial Transaction Card Theft

§ 16-14-20 - CDR Code 0348

This offense involves the possession of an FTC or the number of an FTC without the consent of the person whose name appears on the card, with the intent to use the card, sell the card, or transfer the card to a person other than the issuer or the person whose name appears on the card. This offense is a Felony, and punishable pursuant to §16-14-100(b). Fine of not less than \$3,000 nor more than \$5,000 or imprisoned not more than 5 years, or both.

5. Financial Transaction Card Forgery

§16-14-40 - CDR Code 0041

This offense involves the making or alteration of FTC's, putting such FTC's into circulation, or signing an FTC, when one is not the person whose name appears on the FTC. There must be fraudulent intent to defraud (1) the issuer, (2) a person or organization providing money, goods or services, or (3) any other person. This offense is a Felony, and punishable by a fine of not less than \$3,000 nor more than \$5,000 or imprisonment for not more than 5 years, or both.

6. Financial Transaction Card Fraud

§ 16-14-60) - CDR Codes 731, 732, 1205-1207, 2349-2351

This offense covers various uses of an FTC with the intent to defraud the issuer, a person or organization providing money, goods or services, or any other person. These uses include obtaining money, goods or services with an FTC which is known to be illegally made, altered or obtained using an FTC to deposit, by means of an automated banking device, any forged, altered or otherwise improper check, draft or money order, receiving money, goods, or services. If the value of the money, goods or services received in violation of these provisions does not exceed \$500 in any six month period, the offense constitutes a Class A Misdemeanor, and is punishable by a fine of not more than \$1,000 or imprisonment of not more than 1 year, or both. If the value of such money, goods or services is greater than \$500 in any six month period, the offense is a felony punishable by a fine of not less than \$3,000 nor more than \$5,000 or imprisonment of not more than 5 years, or both.

Another use which is prohibited pursuant to this section is to knowingly and wilfully exceed the authorized credit limit on an FTC account by \$500 or 50% of such credit limit, whichever amount is greater, and fail to repay to the issuer such excess over the credit limit within ten days after notice of such excess is sent by certified mail. Failure to pay such excess within ten days of notice constitutes prima facie evidence of fraudulent intent. Conviction of this offense constitutes a misdemeanor, and is

punishable by a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both.

A person who is authorized by the issuer to accept an FTC in exchange for money, goods or services is guilty of an offense under §16-14-60(b) if he, with intent to defraud the issuer of cardholder (1) accepts an FTC which has been stolen or is otherwise illegally retained pursuant to §16-14-20, or (2) accepts an FTC which he knows is forged, expired or revoked, or (3) fails to furnish money, goods or services which he represents in writing to the issuer that he has furnished. Upon conviction for an offense under §16-14-60(b), the accused will be sentenced according to the amount of money, goods, or property involved. If the value of the money, goods, or property furnished or the difference between the value actually furnished and the value represented to the issuer to have been furnished does not exceed \$500 in any six month period, the offense is punishable by a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both. If such value is greater than \$500 in any six month period, the offense is a felony punishable by a fine of not less than \$3,000 nor more than \$5,000 or imprisonment for not more than 5 years, or both.

A further instance of FTC fraud is set out in §16-14-60(c) and involves giving false information to the insurer of an FTC when one fills out the application for such FTC. If an applicant for an FTC knowingly makes or causes to be made false statements or reports regarding (1) name, (2) occupation, (3) financial condition, (4) assets, or (5) liabilities, he may be charged with a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both. Any willful and substantial overvaluation of assets, or any willful omission or substantial undervaluation of an indebtedness is prohibited under this section.

It is a misdemeanor punishable by a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both, for a cardholder to willfully, knowingly, and with intent to defraud the issuer, person or organization providing money, goods or services, or any other person, to submit a false report, oral or written, of the loss, theft, disappearance or nonreceipt of an FTC. Such acts are set out §16-14-60(d) as an FTC fraud.

For purposes of §16-14-60, a cardholder has notice of the revocation of an FTC and such revocation is immediate, upon notice being given in person. The sending of notice of revocation by registered or certified mail in a properly stamped envelope addressed to the cardholder at the last address known to the issuer shall constitute prima facie evidence of notice to the cardholder after seven days from the date of mailing. If the address is outside the U.S., Puerto Rico, the Virgin Islands, the Canal Zone and Canada, the cardholder is presumed to have received notice of revocation of the FTC after ten days from the date of mailing.

7. Criminal Possession of Financial Transaction Card Forgery Devices

§16-14-70 - CDR 0020

This offense involves (1) the possession by a person, other than the named cardholder, of two or more incomplete FTC's with the intent to complete them without the consent of the issuer, or (2) the possession with knowledge of its character of machinery, plates, or any other devices designed to make an item purporting to be an FTC of an issuer who has not consented to the making of such FTC. Conviction under this section is punishable by a fine of not less than \$3,000 nor more than \$5,000 or imprisonment for not more than 5 years, or both.

For purposes of this section, and FTC is "incomplete" when any of the information which the issuer requires to appear on an FTC before it can be used (except the cardholder's signature) has not been stamped, embossed, imprinted, encoded, or written on the FTC.

8. Criminally Receiving Goods or Services Fraudulently Obtained

§16-14-80 - CDR Codes 733, 2370

This offense involves the receipt of money, goods, services or anything else of value obtained in violation of §16-14-60(a) with the knowledge or belief that such money, goods, services, or other things of value were obtained in violation of §16-14-60(a). (See FINANCIAL TRANSACTION CARD FRAUD above). If the value of the money, goods, or property furnished or the difference between the value actually furnished and the value represented to the issuer to have been furnished does not exceed \$500 in any six month period, the offense is punishable by a fine of not more than \$1,000 or imprisonment for not more than 1 year, or both. If such value is greater than \$500 in any six month period, the offense is punishable by a fine of not less than \$3,000 nor more than \$5,000 or imprisonment for not more than 5 years, or both.