

# BOND REFORM

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# BOND REFORM – H. 3532

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- Went into effect June 20, 2022 (mostly)
- Affects
  - Whether summary court can set bond
  - What kind of bond may be set (i.e., cash only in certain instances)
  - Issuance of bench warrants for bond violations
  - New GS charge for committing violent crime while on bond for violent crime
  - Electronic monitoring (took effect December 20, 2023)
  - Definition of “surety bondsman” (takes effect July 1, 2024)

## §17-15-270

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- Created new GS offense (CDR Code 4089)
- Unlawful to commit a violent offense while on bond or other pretrial release for a violent offense
- Nothing to do with bond setting, but judges will be presented warrants for this offense

## CASH BONDS - § 17-15-15

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- Person is on bond or other pretrial release for **any** offense (e.g., DUI, A&B)
- Subsequently commits **violent offense OR felony offense involving a firearm**
- Bond must be full (i.e., no 10%) cash bond to the exclusion of other forms of bond
- Statute doesn't say, but assume that cash equivalents are OK (cashier's check, money order, etc.)

# “FELONY OFFENSE INVOLVING A FIREARM”

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- Not defined by the statute
- If the offense is violent, determination is irrelevant as a practical matter
- Some offenses clearly fall into this category (e.g., Discharging Firearm into Dwelling)
- Felony offenses that may or may not have involved a firearm? (e.g., Malicious Injury to Property \$2K-\$10K)
- Felony offense with accompanying firearm charge (e.g., charged with felony drug offense and also charged with unlawful carrying of a pistol?)

# COMMON FELONY OFFENSES INVOLVING A FIREARM (THAT AREN'T VIOLENT OFFENSES)

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- Discharging Firearm into a Dwelling
- Pointing and Presenting
- Discharging Firearm into Vehicle or Aircraft While Occupied
- Poss. of Firearm or Ammunition by Person Convicted of Violent Felony
- Poss. of Firearm or Ammunition by Person Convicted of DV 1<sup>st</sup> (not 2<sup>nd</sup> or 3<sup>rd</sup>)
- Poss. of Firearm or Ammunition by Person Convicted of PWID, Manf., Dist., Trafficking

# COMMON MISDEMEANOR OFFENSES INVOLVING A FIREARM

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- Unlawful Carrying of a Pistol
- Possession of Firearm or Ammunition by Person Convicted of DV 2<sup>nd</sup> or 3<sup>rd</sup>
- Possession of Firearm or Ammunition by Person Subject to Order of Protection

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## *CDR Codes*

### Records with Matching Offense Statute(s):

CDR Code	Offense Statute(s)	Statute Description
<a href="#">44</a>	<a href="#">16-23-0020</a> <a href="#">16-23-0050(A)(2)</a>	Weapons / Unlawful carrying of pistol



### *CDR Codes*

<b>CDR Code:</b>	44	
<b>Offense Description:</b>	Weapons / Unlawful carrying of pistol	
<b>Offense Statute(s):</b>	<a href="#">16-23-0020</a>	<a href="#">16-23-0050(A)(2)</a>
<b>Penalty Statute(s):</b>	<a href="#">16-23-0050(A)(2)</a>	
<b>Offense Type:</b>	Misdemeanor	
<b>Offense Class:</b>	C	
<b>Status:</b>	Active	
<b>Effective Date:</b>		
<b>Expiration Date:</b>		
<b>Rescind/Retire Date:</b>		
<b>Last Updated:</b>		

# DETERMINATION OF BOND - § 17-15-30 / § 22-5-510

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- Court **must** consider whether a person is currently on bond for another offense
- Law enforcement **must** provide court with information whether person is currently on bond for another offense

# BONDS THAT MUST BE HEARD BY CIRCUIT COURT

## - § 17-15-55

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- *Status quo ante*
  - Defendant on bond for violent offense, charged with subsequent violent offense, must have bond heard in circuit court
- Now
  - Defendant on bond for violent offense OR felony offense involving a firearm, charged with subsequent violent offense or felony offense involving a firearm, must have bond heard in circuit court

# BOND REVOCATION – § 17-15-55 BENCH WARRANT FOR VIOL. OF BOND - § 38-53-70

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- Concurrent jurisdiction with the circuit court for purposes of bond revocation was expanded from 14 days to 30 days - § 17-15-55
- Court shall issue bench warrant if person “violates the conditions of release on bond” - § 38-53-70

# WHAT IS A BENCH WARRANT?

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- Purpose of bench warrant is to bring to court a defendant over whom the court has already acquired jurisdiction in order to adjudicate an existing matter over which the court has jurisdiction

# BOND REVOCATION

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- (B)(1) Motions by the State to revoke or modify a bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motions must be filed with the clerks of court, and a copy must be served on the chief judge, defense counsel of record, and bond surety, if any. The court must have a hearing and rule on the state's motion within thirty days of the filing.
- (3) If the state's motion to revoke or modify bond includes a prima facie showing of imminent danger to the community, imminent danger to the defendant, or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court judge within forty-eight hours of receiving service of the state's motion or as soon as practical. The chief judge shall order the solicitor to notify the defense counsel of record and bond surety of the time and date of the hearing, and the solicitor shall provide proof that reasonable efforts were made to affect the notice. Upon notice by the State, the defense counsel of record and bond surety shall make reasonable efforts to notify the defendant of the emergency hearing. The court may proceed with the hearing despite the absence of the defendant or bond surety. The court may not proceed with the hearing if the defense counsel of record is not present. If an emergency bond hearing is held without the presence of the defendant and bond is revoked, the judge having heard the matter may conduct the hearing on the defendant's motion to reconsider the revocation. Defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety.

A. If offense is punishable by death or life imprisonment, circuit court must set bond.

B. If offense is Burglary 1<sup>st</sup>, summary court may set bond unless Solicitor objects

C.

1. Is the defendant currently on bond?
2. Is the existing bond for a violent offense or a felony offense involving a firearm?
3. Is the new charge a violent offense? (If yes, skip 4.)
4. Is the new charge a felony offense involving a firearm?

If 1, 2, and 3 are all yes, then circuit court must set bond

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If 1 & 3 are yes, bond may be set or denied. If bond is set, must be a cash bond w/ no 10%.

If 1 & 4 are yes, bond must be set, and must be a cash bond w/ no 10%.

If 3 is yes, may set or deny bond and bond may be cash/surety/PR/10% as appropriate.

Otherwise, bond must be set, and may be cash/surety/PR/10% bond as appropriate.

# SCENARIO #1

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- On Bond for DUI
- Charged w/ Discharging Firearm into Dwelling



A. If offense is punishable by death or life imprisonment, circuit court must set bond. **NO**

B. If offense is Burglary 1<sup>st</sup>, summary court may set bond unless Solicitor objects **NO**

C.

1. Is the defendant currently on bond? **YES, DUI**

2. Is the existing bond for a violent offense or a felony offense involving a firearm? **NO**

3. Is the new charge a violent offense? (If yes, skip C.4) **NO**

4. Is the new charge a felony offense involving a firearm? **YES**

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A. If offense is punishable by death or life imprisonment, circuit court must set bond. **NO**

B. If offense is Burglary 1<sup>st</sup>, summary court may set bond unless Solicitor objects **NO**

C.

1. Is the defendant currently on bond? **YES, DUI**

2. Is the existing bond for a violent offense or a felony offense involving a firearm? **NO**

3. Is the new charge a violent offense? (If yes, skip 4.) **NO**

4. Is the new charge a felony offense involving a firearm? **YES**

If 1, 2, and 3 are all yes, then circuit court must set bond

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## SCENARIO #2

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- Not Currently on Bond
- Charged w/ Pointing and Presenting

- A. If offense is punishable by death or life imprisonment, circuit court must set bond. **NO**
- B. If offense is Burglary 1<sup>st</sup>, summary court may set bond unless Solicitor objects **NO**
- C.
1. Is the defendant currently on bond? **NO**
  2. Is the existing bond for a violent offense or a felony offense involving a firearm? **NO**
  3. Is the new charge a violent offense? (If yes, skip 4.) **NO**
  4. Is the new charge a felony offense involving a firearm? **YES**

If 1, 2, and 3 are all yes, then circuit court must set bond

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- A. If offense is punishable by death or life imprisonment, circuit court must set bond. **NO**
- B. If offense is Burglary 1<sup>st</sup>, summary court may set bond unless Solicitor objects **NO**
- C.
  - 1. Is the defendant currently on bond? **NO**
  - 2. Is the existing bond for a violent offense or a felony offense involving a firearm? **NO**
  - 3. Is the new charge a violent offense? (If yes, skip 4.) **NO**
  - 4. Is the new charge a felony offense involving a firearm? **YES**

If 1, 2, and 3 are all yes, then circuit court must set bond

If 1, 2, and 4 are all yes, then circuit court must set bond

If 1 & 3 are yes, bond may be set or denied. If bond is set, must be a cash bond w/ no 10%.

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