

1983 WL 181762 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 18, 1983

***1 RE: Right to Jury Trial for First Time DUI**

Lawrence O. Guillory, Esquire
806 St. John
Lafayette, Louisiana 70501

Dear Sir:

Attorney General Travis Medlock has referred your letter, dated February 11, 1983, to me for reply.

In general, South Carolina has two (2) levels of criminal court at which DUI (driving under the influence) cases may be tried. For a first offender, the case is tried in a Magistrate's Court, which has jurisdiction over all criminal cases where the maximum fine or punishment is \$200.00 and/or thirty (30) days. The penalty for conviction of first offense DUI is a maximum fine of \$200.00, and/or a jail term of thirty days. The defendant has a right to a jury trial in Magistrate's Court on a DUI charge. The jury is composed of six (6) persons.

The higher level of criminal prosecution in this State takes place at the Circuit Court. South Carolina is divided into sixteen (16) judicial circuits, each with a Circuit Court and at least two (2) Circuit Court Judges. The Circuit Court is divided into two sections, Court of Common Pleas, for civil cases, and Court of General Sessions for criminal cases. The Circuit Court has jurisdiction for all criminal cases where the maximum punishment exceeds \$200.00 or thirty days, up to and including capital cases. A second offense DUI is a Circuit Court offense. The maximum punishment for conviction for a second offense, driving under the influence of alcohol and/or drugs, is one (1) year in jail or a fine of up to \$1,000.00, or both; for a third offense, three (3) years or \$2,000.00; for a fourth and subsequent offenses, four (4) years or \$3,000.00. The right to jury trial exist in the Circuit Court, the jury consists of twelve (12) persons.

Enclosed is a copy of [§ 56-5-2930, Code of Laws of South Carolina](#), setting up the offense of driving under the influence of liquor or drugs. Also enclosed is a copy of [§ 56-5-2940 of the Code of Laws](#), which provides the penalties for violations of the preceding section. Also enclosed is a copy of South Carolina's implied consent law, [§ 56-5-2950](#).

The right to jury trial exists at the trial level, in either Magistrate's Court or Circuit Court. An appeal from a conviction in Magistrate's Court goes to the Circuit Court, where it is considered without a jury; further appeal is to the State Supreme Court. An appeal of a conviction in the Circuit Court is directly to the State Supreme Court.

Finally, the most basic authority in South Carolina for the right to trial by jury is contained in the [State Constitution, Art. 1, § 14](#), a copy of which has been enclosed.

I trust this information satisfies your inquiry and if further information is needed, please do not hesitate to contact me.

Sincerely yours,

James G. Bogle
Assistant Attorney General

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