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CHAPTER 25

Criminal Domestic Violence

ARTICLE 1

General Provisions

**SECTION 16‑25‑10.** Definitions.

 As used in this article, the term:

 (1) “Deadly weapon” means any pistol, dirk, slingshot, metal knuckles, razor, or other instrument which can be used to inflict deadly force.

 (2) “Great bodily injury” means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

 (3) “Household member” means:

 (a) a spouse;

 (b) a former spouse;

 (c) persons who have a child in common; or

 (d) a male and female who are cohabiting or formerly have cohabited.

 (4) “Moderate bodily injury” means physical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one‑time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

 (5) “Prior conviction of domestic violence” includes conviction of any crime, in any state, containing among its elements those enumerated in, or substantially similar to those enumerated in, Section 16‑25‑20(A) that is committed against a household member as defined in item (3) within the ten years prior to the incident date of the current offense.

 (6) “Protection order” means any order of protection, restraining order, condition of bond, or any other similar order issued in this State or another state or foreign jurisdiction for the purpose of protecting a household member.

 (7) “Firearm” means a pistol, revolver, rifle, shotgun, machine gun, submachine gun, or an assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive but does not include an antique firearm as defined in 18 U.S.C. 921(a)(16).

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 1, eff January 1, 2006; 2015 Act No. 58 (S.3), Pt II, Section 2, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 2, rewrote the section, adding (1), (2), (4), (5), (6), and (7); and in (3), changed the paragraph designators from numbers to letters.

**SECTION 16‑25‑20.** Acts prohibited; penalties.

 (A) It is unlawful to:

 (1) cause physical harm or injury to a person’s own household member; or

 (2) offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

 (B) Except as otherwise provided in this section, a person commits the offense of domestic violence in the first degree if the person violates the provisions of subsection (A) and:

 (1) great bodily injury to the person’s own household member results or the act is accomplished by means likely to result in great bodily injury to the person’s own household member;

 (2) the person violates a protection order and in the process of violating the order commits domestic violence in the second degree;

 (3) has two or more prior convictions of domestic violence within ten years of the current offense;

 (4) the person uses a firearm in any manner while violating the provisions of subsection (A); or

 (5) in the process of committing domestic violence in the second degree one of the following also results:

 (a) the offense is committed in the presence of, or while being perceived by a minor;

 (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;

 (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;

 (d) the offense is committed by impeding the victim’s breathing or air flow; or

 (e) the offense is committed using physical force or the threatened use of force against another to block that person’s access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:

 (i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

 (ii) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

 A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

 Domestic violence in the first degree is a lesser included offense of domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65.

 (C) A person commits the offense of domestic violence in the second degree if the person violates subsection (A) and:

 (1) moderate bodily injury to the person’s own household member results or the act is accomplished by means likely to result in moderate bodily injury to the person’s own household member;

 (2) the person violates a protection order and in the process of violating the order commits domestic violence in the third degree;

 (3) the person has one prior conviction for domestic violence in the past ten years from the current offense; or

 (4) in the process of committing domestic violence in the third degree one of the following also results:

 (a) the offense is committed in the presence of, or while being perceived by, a minor;

 (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;

 (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;

 (d) the offense is committed by impeding the victim’s breathing or air flow; or

 (e) the offense is committed using physical force or the threatened use of force against another to block that person’s access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:

 (i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

 (ii) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

 A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned for not more than three years, or both.

 Domestic violence in the second degree is a lesser‑included offense of domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65.

 Assault and battery in the second degree pursuant to Section 16‑3‑600(D) is a lesser‑included offense of domestic violence in the second degree as defined in this subsection.

 (D) A person commits the offense of domestic violence in the third degree if the person violates subsection (A).

 (1) A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned not more than ninety days, or both. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, and 22‑3‑550, an offense pursuant to the provisions of this subsection may be tried in summary court.

 (2) Domestic violence in the third degree is a lesser‑included offense of domestic violence in the second degree, as defined in subsection (C), domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65.

 (3) Assault and battery in the third degree pursuant to Section 16‑3‑600(E) is a lesser‑included offense of domestic violence in the third degree as defined in this subsection.

 (4) A person who violates this subsection is eligible for pretrial intervention pursuant to Chapter 22, Title 17.

 (E) When a person is convicted of a violation of Section 16‑25‑20(B) or (C) or Section 16‑25‑65, the circuit court may suspend execution of all or part of the sentence and place the offender on probation, or if a person is convicted of a violation of Section 16‑25‑20(D), the court may suspend execution of all or part of the sentence, conditioned upon:

 (1) the offender’s mandatory completion, to the satisfaction of the court, of a domestic violence intervention program designed to treat batterers in accordance with the provisions of subsection (G);

 (2) fulfillment of all the obligations arising under court order pursuant to this section and Section 16‑25‑65;

 (3) other reasonable terms and conditions of probation as the court may determine necessary to ensure the protection of the victim; and

 (4) making restitution as the court deems appropriate.

 (F) In determining whether or not to suspend the imposition or execution of all or part of a sentence as provided in this section, the court must consider the nature and severity of the offense, the number of times the offender has repeated the offense, and the best interests and safety of the victim.

 (G) An offender who participates in a domestic violence intervention program pursuant to this section, shall participate in a program offered through a government agency, nonprofit organization, or private provider selected and approved by the Circuit Solicitor with jurisdiction over the offense or the Attorney General if the offense is prosecuted by the Attorney General’s Office. If the offender moves to a different circuit after entering a treatment program selected by the Circuit Solicitor, the Circuit Solicitor for the county in which the offender resides shall have the authority to select and approve the batterer’s treatment program. The offender shall pay a reasonable fee, if required, for participation in the program but no person may be denied participation due to inability to pay. If the offender suffers from a substance abuse problem or mental health concern, the judge may order, or the 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 Section 61‑12‑20 or the Department of Mental Health or Veterans’ Hospital, respectively. The offender must pay a reasonable fee for participation in the substance abuse treatment or mental health program, if required, but no person may be denied participation due to inability to pay.

 (H) A person who violates the terms and conditions of an order of protection issued in this State pursuant to Chapter 4, Title 20, the “Protection from Domestic Abuse Act”, or a valid protection order related to domestic or family violence issued by a court of another state, tribe, or territory is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days and fined not more than five hundred dollars.

 (I) Unless the complaint is voluntarily dismissed or the charge is dropped prior to the scheduled trial date, a person charged with a violation provided in this chapter must appear before a judge for disposition of the case or be tried in the person’s absence.

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 2, eff January 1, 2006; 2008 Act No. 255, Section 1, eff June 4, 2008; 2015 Act No. 58 (S.3), Pt II, Section 4, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 4, rewrote (B), deleted former (C), redesignated former (D) through (H) as (C) through (G), and added (H) and (I).

**SECTION 16‑25‑30.** Firearms and ammunition prohibitions; penalties.

 (A) Notwithstanding the provisions of Section 16‑23‑30, it is unlawful for a person to ship, transport, receive, or possess a firearm or ammunition, if the person:

 (1) has been convicted of a violation of Section 16‑25‑20(B) or 16‑25‑65, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(B) or Section 16‑25‑65;

 (2) has been convicted of a violation of Section 16‑25‑20(C) and the court made specific findings and concluded that the person caused moderate bodily injury to their own household member, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(C) and the court made specific findings and concluded that the person caused moderate bodily injury to their own household member;

 (3) has been convicted of a violation of Section 16‑25‑20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition;

 (4) is subject to a valid order of protection issued by the family court pursuant to Chapter 4, Title 20, and the family court judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the family court judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition. The standard applied in this subsection applies only to the determination of whether to prohibit a person from possessing a firearm or ammunition and does not apply to the issuance of the order pursuant to Chapter 4, Title 20; or

 (5) is subject to a valid order of protection related to domestic or family violence issued by a court of another state, tribe, or territory in compliance with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, and the judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition. The standard applied in this subsection applies only to the determination of whether to prohibit a person from possessing a firearm or ammunition and does not apply to the issuance of the order pursuant to Chapter 4, Title 20.

 (B) A person who violates subsection (A)(1) is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than five years, or both. A person who violates subsection (A)(2) or (A)(3) is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. A person who violates subsection (A)(4) or (A)(5) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

 (C) A person must not be considered to have been convicted of domestic violence for purposes of this section unless the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and in the case of a prosecution for an offense described in this section for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise. A person must not be considered to have been convicted of domestic violence for purposes of this section if the conviction has been expunged, set aside, or is an offense for which the person has been pardoned.

 (D) At the time a person is convicted of violating the provisions of Section 16‑25‑20 or 16‑25‑65, or upon the issuance of an order of protection pursuant to Chapter 4, Title 20, the court must deliver to the person a written form that conspicuously bears the following language: “Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16‑25‑20 or 16‑25‑65, or a person who is subject to a valid order of protection pursuant to Chapter 4, Title 20, to ship, transport, possess, or receive a firearm or ammunition.”

 (E) The provisions of this section prohibiting the possession of firearms and ammunition by persons who have been convicted of domestic violence shall apply to a person who has been convicted of domestic violence for:

 (1) life, if the person has been convicted of a violation of Section 16‑25‑65, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑65;

 (2) ten years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later, if the person has been convicted of a violation of Section 16‑25‑20(B), or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(B);

 (3) three years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later, if the person has been convicted of a violation of Section 16‑25‑20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition; or

 (4) the duration of the order of protection, if the person is subject to a valid order of protection issued by the family court pursuant to Chapter 4, Title 20, and the family court judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the family court judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or is subject to a valid order of protection related to domestic or family violence issued by a court of another state, tribe, or territory in compliance with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act and the judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition.

 (F)(1) Following the period of time established in subsection (E), if the person has not been convicted of any other domestic violence offenses pursuant to this article or similar offenses in another jurisdiction, no domestic violence charges are currently pending against the person, and the person is not otherwise prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition pursuant to any other State law, the person’s right to ship, transport, receive, or possess a firearm or ammunition shall be restored.

 (2) Following the period of time established in subsection (E), if the person requests in writing to the South Carolina Law Enforcement Division (SLED), SLED shall notify the National Instant Criminal Background Check System (NICS) that the State has restored the person’s right to ship, transport, receive, or possess a firearm or ammunition, and shall request immediate removal of the person’s name to whom the restrictions contained in this section apply.

HISTORY: 2009 Act No. 59, Section 6, eff June 2, 2009; 2015 Act No. 58 (S.3), Pt II, Section 9, eff June 4, 2015.

Editor’s Note

Former Section 16‑25‑30, entitled “Penalties”, was derived from 1984 Act No. 484, Section 1, 1994 Act No. 519, Section 1, and omitted effective January 1, 2004, by 2003 Act No. 92.

Effect of Amendment

2015 Act No. 58, Section 9, rewrote the section.

**SECTIONS 16‑25‑40 to 16‑25‑60.** Omitted by 2003 Act No. 92, Section 3, eff January 1, 2004.

Editor’s Note

Former Section 16‑25‑40 was entitled “Penalty upon third conviction” and was derived from 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1.

Former Section 16‑25‑50 was entitled “Penalty for violation of order of protection” and was derived from 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 1998 Act No. 312, Section 2.

Former Section 16‑25‑60 was entitled “Person charged to appear before judge; suspension of sentence; conditions” and was derived from 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 1995 Act No. 138, Section 2.

**SECTION 16‑25‑65.** Domestic violence of a high and aggravated nature; elements; penalty; statutory offense.

 (A) A person who violates Section 16‑25‑20(A) is guilty of the offense of domestic violence of a high and aggravated nature when one of the following occurs. The person:

 (1) commits the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results;

 (2) commits the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death; or

 (3) violates a protection order and, in the process of violating the order, commits domestic violence in the first degree.

 (B) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years.

 (C) The provisions of subsection (A) create a statutory offense of domestic violence of a high and aggravated nature and must not be construed to codify the common law crime of assault and battery of a high and aggravated nature.

 (D) Circumstances manifesting extreme indifference to the value of human life include, but are not limited to, the following:

 (1) using a deadly weapon;

 (2) knowingly and intentionally impeding the normal breathing or circulation of the blood of a household member by applying pressure to the throat or neck or by obstructing the nose or mouth of a household member and thereby causing stupor or loss of consciousness for any period of time;

 (3) committing the offense in the presence of a minor;

 (4) committing the offense against a person he knew, or should have known, to be pregnant;

 (5) committing the offense during the commission of a robbery, burglary, kidnapping, or theft; or

 (6) using physical force against another to block that person’s access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:

 (a) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

 (b) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

HISTORY: 1994 Act No. 516, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 3, eff January 1, 2006; 2015 Act No. 58 (S.3), Pt II, Section 5, eff June 4, 2015.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Effect of Amendment

2015 Act No. 58, Section 5, rewrote (A) and (B); in (C), deleted “criminal” before “domestic violence”; and added (D).

**SECTION 16‑25‑70.** Warrantless arrest or search; admissibility of evidence.

 (A) A law enforcement officer may arrest, with or without a warrant, a person at the person’s place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony pursuant to the provisions of Section 16‑25‑20, 16‑25‑65, or 16‑25‑125, even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of probable cause related to a violation pursuant to the provisions of this chapter by telephone or radio communication with the appropriate law enforcement agency. A law enforcement agency must complete an investigation of an alleged violation of this chapter even if the law enforcement agency was not notified at the time the alleged violation occurred. The investigation must be documented on an incident report form which must be maintained by the investigating agency. If an arrest warrant is sought, the law enforcement agency must present the results of the investigation and any other relevant evidence to a magistrate who may issue an arrest warrant if probable cause is established.

 (B) A law enforcement officer may arrest, with or without a warrant, a person at the person’s place of residence or elsewhere if physical manifestations of injury to the alleged victim are present and the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16‑25‑20 or 16‑25‑65 even if the act did not take place in the presence of the officer. A law enforcement officer may not make an arrest if he determines probable cause does not exist after consideration of the factors set forth in subsection (D) and observance that no physical manifestation of injury is present. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement agency.

 (C) In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member.

 (D) If a law enforcement officer receives conflicting complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer must not arrest the other person accused of having committed domestic or family violence. In determining whether a person is the primary aggressor, the officer must consider the following factors and any other factors he considers relevant:

 (1) prior complaints of domestic or family violence;

 (2) the relative severity of the injuries inflicted on each person taking into account injuries alleged which may not be easily visible at the time of the investigation;

 (3) the likelihood of future injury to each person;

 (4) whether one of the persons acted in self‑defense; and

 (5) household member accounts regarding the history of domestic violence.

 (E) A law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage a party’s requests for intervention by law enforcement.

 (F) A law enforcement officer who arrests two or more persons for a crime involving domestic or family violence must include the grounds for arresting both parties in the written incident report, and must include a statement in the report that the officer attempted to determine which party was the primary aggressor pursuant to this section and was unable to make a determination based upon the evidence available at the time of the arrest.

 (G) When two or more household members are charged with a crime involving domestic or family violence arising from the same incident and the court finds that one party was the primary aggressor pursuant to this section, the court, if appropriate, may dismiss charges against the other party or parties.

 (H) Evidence discovered as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in a court of law:

 (1) if it is found:

 (a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or

 (b) pursuant to a search incident to a lawful arrest for a violation of this article or for a violation of Chapter 3, Title 16; or

 (2) if it is evidence of a violation of this article.

 An officer may arrest and file criminal charges against a suspect for any offense that arises from evidence discovered pursuant to this section.

 Unless otherwise provided for in this section, no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law.

 (I) In addition to the protections granted to the law enforcement officer and law enforcement agency under the South Carolina Tort Claims Act, a law enforcement officer is not liable for an act, omission, or exercise of discretion under this section unless the act, omission, or exercise of discretion constitutes gross negligence, recklessness, wilfulness, or wantonness.

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 1995 Act No. 83, Section 61; 1997 Act No. 120, Section 3; 2002 Act No. 329, Section 4, eff June 18, 2002; 2003 Act No. 92, Section 3, eff January 1, 2004; 2008 Act No. 319, Section 3, eff June 11, 2008; 2015 Act No. 58 (S.3), Pt IV, Section 16, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 16, in (A), deleted “(A) or (D)” following “16‑25‑20”, and added the second to last sentence, relating to the incident report; in (B), substituted “may arrest” for “must arrest”, deleted “(A) or (D)” following “16‑25‑20”, and substituted “officer may not make” for “officer is not required to make”.

**SECTION 16‑25‑80.** Effect on enforcement of contempt orders and police arrest powers; construction with assault and battery and other criminal offenses.

 Nothing in this article affects or limits the powers of any court to enforce its own orders by civil or criminal contempt or the powers of the police to make other lawful arrests.

 Nothing in this article may be construed to repeal, replace, or preclude application of any other provisions of law pertaining to assault, assault and battery, assault and battery of a high and aggravated nature, or other criminal offenses.

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

**SECTION 16‑25‑90.** Parole eligibility as affected by evidence of domestic violence suffered at hands of household member.

 Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one‑fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post‑ conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16‑25‑20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17‑27‑45.

HISTORY: 1995 Act No. 7, Part I Section 14; 1998 Act No. 401, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004.

**SECTION 16‑25‑100.** Judicial training on issues concerning domestic violence.

 Magistrates, municipal court judges, family court judges, and circuit court judges shall receive continuing legal education on issues concerning domestic violence. The frequency and content of the continuing legal education is to be determined by the South Carolina Court Administration at the direction of the Chief Justice of the South Carolina Supreme Court.

HISTORY: 2005 Act No. 166, Section 4, eff January 1, 2006.

**SECTION 16‑25‑120.** Release on bond; factors; issuance of restraining order; notice of right to counsel.

 (A) In addition to the provisions of Section 17‑15‑30, the court must consider the factors provided in subsection (B) when considering release of a person on bond who is charged with a violent offense, as defined in Section 16‑1‑60, when the victim of the offense is a household member, as defined in Section 16‑25‑10, and the person:

 (1) is subject to the terms of a valid order of protection or restraining order at the time of the offense in this State or another state; or

 (2) has a previous conviction involving the violation of a valid order of protection or restraining order in this State or another state.

 (B) The court must consider the following factors before release of a person on bond who is subject to the provisions of subsection (A):

 (1) whether the person has a history of domestic violence, as defined in this article, or a history of other violent offenses, as defined in Section 16‑1‑60;

 (2) the mental health of the person;

 (3) whether the person has a history of violating the orders of a court or other governmental agency; and

 (4) whether the person poses a potential threat to another person.

 (C) When considering release of a person on bond under this section, the court must consider whether to issue a restraining order or order of protection provided for in Chapter 4 of Title 20 against the person. The court must consider the factors enumerated in subsection (B) of this section, and if it determines in its discretion that a restraining order or order of protection is required, it should issue the order or forward the matter to the appropriate court.

 (D)(1) At the bond hearing pursuant to the provisions of this section or another provision of law, the court shall inform in writing the person charged with a violation of Article 1, Chapter 25, Title 16 of his right to obtain counsel and, if indigent, his right to court‑appointed counsel along with instructions on how to obtain court‑appointed counsel.

 (2) If the court decides to release the person pending his trial, the court shall provide the person with a written notice that must conspicuously bear the following language:

 “Pursuant to Section 16‑25‑125 of the South Carolina Code of Laws, it is unlawful for a person who has been charged with or convicted of criminal domestic violence or criminal domestic violence of a high and aggravated nature, who is subject to an order of protection, or who is subject to a restraining order, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person’s household member resides or the domestic violence shelter’s administrative offices. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.”.

 (3) The court shall provide the person with an opportunity to sign the notice evidencing the person’s acknowledgment of having received and read the notice.

HISTORY: 2005 Act No. 166, Section 5, eff January 1, 2006; 2008 Act No. 319, Section 4, eff June 11, 2008; 2015 Act No. 58 (S.3), Pt III, Section 13, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 13, in (A) and (B), substituted “must consider” for “may consider”; and in (B)(1), deleted “criminal” before “domestic violence”.

**SECTION 16‑25‑125.** Trespass upon grounds or structure of domestic violence shelter; penalty; notice.

 (A) For purposes of this section:

 (1) “Domestic violence shelter” means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

 (2) “Grounds” means the real property of the parcel of land upon which a domestic violence shelter or a domestic violence shelter’s administrative offices are located, whether fenced or unfenced.

 (3) “Household member” means a household member as defined in Section 16‑25‑10.

 (B) It is unlawful for a person who has been charged with or convicted of a violation of Section 16‑25‑20 or Section 16‑25‑65, who is subject to an order of protection issued pursuant to Chapter 4 of Title 20, or who is subject to a restraining order issued pursuant to Article 17, Chapter 3 of Title 16, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person’s household member resides or the domestic violence shelter’s administrative offices.

 (C) The domestic violence shelter must post signs at conspicuous places on the grounds of the domestic violence shelter and the domestic violence shelter’s administrative offices which, at a minimum, read substantially as follows:

“NO TRESPASSING

VIOLATORS WILL BE SUBJECT TO CRIMINAL PENALTIES”.

 (D) This section does not apply if the person has legitimate business or any authorization, license, or invitation to enter or remain upon the grounds or structure of the domestic violence shelter or the domestic violence shelter’s administrative offices.

 (E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

HISTORY: 2008 Act No. 319, Section 1, eff June 11, 2008.

ARTICLE 3

Domestic Violence Advisory Committee

**SECTION 16‑25‑310.** Definitions.

 For purposes of this article:

 (1) “Committee” means the Domestic Violence Advisory Committee.

 (2) “Household member” means a household member as defined in Section 16‑25‑10.

 (3) “Meeting” means both in‑person meetings and meetings through telephone conferencing.

 (4) “Provider of medical care” means a licensed health care practitioner who provides, or a licensed health care facility through which is provided, medical evaluation or treatment, including dental and mental health evaluation or treatment.

 (5) “Working day” means Monday through Friday, excluding official state holidays.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑320.** Multidisciplinary Domestic Violence Advisory Committee created.

 (A) There is created a multidisciplinary Domestic Violence Advisory Committee composed of:

 (1) the Attorney General of the State of South Carolina, or a designee, who serves ex officio;

 (2) the Director of the South Carolina Department of Social Services, or a designee, who serves ex officio;

 (3) the Director of the South Carolina Department of Health and Environmental Control, or a designee, who serves ex officio;

 (4) the Director of the South Carolina Criminal Justice Academy, or a designee, who serves ex officio;

 (5) the Chief of the South Carolina Law Enforcement Division, or a designee, who serves ex officio;

 (6) the Director of the South Carolina Department of Alcohol and Other Drug Abuse Services, or a designee, who serves ex officio;

 (7) the Director of the South Carolina Department of Mental Health, or a designee, who serves ex officio;

 (8) a county coroner or medical examiner, appointed by the Governor on the recommendation of the South Carolina Criminal Justice Academy, who serves ex officio;

 (9) a solicitor, appointed by the Governor on the recommendation of the Attorney General, who serves ex officio;

 (10) a sheriff, appointed by the Governor on the recommendation of the Sheriffs’ Association;

 (11) a victim advocate, appointed by the Governor on the recommendation of the State Office of Victim Assistance of the Office of the Governor;

 (12) a physician with experience in treating victims of domestic violence, appointed by the Governor on the recommendation of the South Carolina Medical Association;

 (13) two members of the public at large dedicated to the issue of domestic violence, appointed by the Governor;

 (14) a police chief, appointed by the Governor on the recommendation of the Law Enforcement Officers’ Association;

 (15) one member of the South Carolina Senate, appointed by the Senate Judiciary Committee Chairman; and

 (16) one member of the South Carolina House of Representatives, appointed by the House Judiciary Committee Chairman.

 (B)(1) If an individual enumerated in subsection (A)(1) through (7) designates an employee to serve as the committee member, the designee must have administrative or program responsibilities for domestic violence.

 (2) A member appointed by the Governor shall serve a term of four years and until a successor is appointed and qualifies.

 (C) The members of the committee shall elect a chairman and vice chairman from among the membership by a majority vote. The chairman and vice chairman shall serve terms of two years.

 (D) The committee shall hold meetings at least quarterly. A majority of the committee constitutes a quorum for the purpose of holding a meeting.

 (E) Each ex officio member shall provide sufficient staff and administrative support to carry out the responsibilities of this article.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑330.** Purpose of committee.

 (A) The purpose of the Domestic Violence Advisory Committee is to decrease the incidences of domestic violence by:

 (1) developing an understanding of the causes and incidences of domestic violence;

 (2) developing plans for and implementing changes within the agencies represented on the committee which will prevent domestic violence; and

 (3) advising the Governor and the General Assembly on statutory, policy, and practice changes which will prevent domestic violence.

 (B) To achieve its purpose, the committee shall:

 (1) undertake annual statistical studies of the incidences and causes of domestic violence in this State, including an analysis of:

 (a) community and public and private agency involvement with the victims and their families;

 (b) whether the abuser has a previous criminal record involving domestic violence or assault and battery;

 (c) recidivism rates;

 (d) the presence of alcohol or drug use;

 (e) whether the abuser has participated in a batterer treatment program or other similar treatment program and the name of the program;

 (f) the success or failure rate of approved treatment programs;

 (g) married versus unmarried rates of violence; and

 (h) the rate of domestic violence per county;

 (2) consider training, including cross‑agency training, consultation, technical assistance needs, and service gaps that would decrease the likelihood of domestic violence;

 (3) determine the need for changes to any statute, regulation, policy, or procedure to decrease the incidences of domestic violence and include proposals for changes to statutes, regulations, policies, and procedures in the committee’s annual report;

 (4) educate the public regarding the incidences and causes of domestic violence, specific steps the public can undertake to prevent domestic violence, and the support that civic, philanthropic, and public service organizations can provide in assisting the committee to educate the public;

 (5) develop and implement policies and procedures for its own governance and operation;

 (6) submit to the Governor and the General Assembly a publicly available annual written report and any other reports prepared by the committee including, but not limited to, the committee’s findings and recommendations; and

 (7) review closed domestic violence cases selected by the Attorney General or solicitor’s representative on the committee to provide the commission with the best opportunity to fulfill its duties under the section.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑340.** Committee access to information and records.

 Upon request of the committee and as necessary to carry out the committee’s purpose and duties, the committee immediately must be provided:

 (1) by a provider of medical care, access to information and records regarding a person whose death is being reviewed by the department pursuant to this article;

 (2) access to all information and records maintained by any state, county, or local government agency including, but not limited to, birth certificates, law enforcement investigation data, county coroner or medical examiner investigation data, parole and probation information and records, and information and records of social services and health agencies that provided services to the victim, alleged perpetrator, and other household members.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑350.** Issuance of subpoena.

 When necessary in the discharge of the duties of the committee and upon application of the committee, the clerks of court shall issue a subpoena or subpoena duces tecum to any state, county, or local agency, board, or commission or to a representative of any state, county, or local agency, board, or commission or to a provider of medical care to compel the attendance of witnesses and production of documents, books, papers, correspondence, memoranda, and other relevant records to the discharge of the department’s duties. Failure to obey a subpoena or subpoena duces tecum issued pursuant to this section may be punished as contempt.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑360.** Confidentiality of meetings; penalty.

 (A) Meetings of the committee are closed to the public and are not subject to Chapter 4, Title 30, the Freedom of Information Act, when the committee and department are discussing an individual case of domestic violence.

 (B) Except as provided in subsection (C), meetings of the committee are open to the public and subject to the Freedom of Information Act when the committee is not discussing an individual case of domestic violence.

 (C) Information identifying a victim or a household member, guardian, or caretaker of a victim, or an alleged or suspected perpetrator of domestic violence may not be disclosed during a public meeting, and information regarding the involvement of any agency with the victim, alleged perpetrator, and other household members may not be disclosed during a public meeting.

 (D) Violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑370.** Confidentiality of information; penalty.

 (A) All information and records acquired by the committee in the exercise of their purposes and duties pursuant to this article are confidential, exempt from disclosure under Chapter 4, Title 30, the Freedom of Information Act, and only may be disclosed as necessary to carry out the committee’s and department’s duties and purposes.

 (B) Statistical compilations of data which do not contain information that would permit the identification of a person to be ascertained are public records.

 (C) Reports of the committee which do not contain information that would permit the identification of a person to be ascertained are public information.

 (D) Except as necessary to carry out the committee’s purposes and duties, members of the committee and persons attending their meeting may not disclose what transpired at a meeting which is not public under Section 16‑25‑360 and may not disclose information, the disclosure of which is prohibited by this section.

 (E) Members of the committee, persons attending a committee meeting, and persons who present information to the committee may not be required to disclose in any civil or criminal proceeding information presented in or opinions formed as a result of a meeting, except that information available from other sources is not immune from introduction into evidence through those sources solely because it was presented during proceedings of the committee or department or because it is maintained by the committee or department. Nothing in this subsection prevents a person from testifying to information obtained independently of the committee or which is public information.

 (F) Information, documents, and records of the committee are not subject to subpoena, discovery, or the Freedom of Information Act, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or the Freedom of Information Act through those sources solely because they were presented during proceedings of the committee or department or because they are maintained by the committee or department.

 (G) Violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

ARTICLE 5

Community Domestic Violence Coordinating Councils

**SECTION 16‑25‑510.** Development of community domestic violence coordinating councils.

 The circuit solicitor shall facilitate the development of community domestic violence coordinating councils in each county or judicial circuit based upon public‑private sector collaboration.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

**SECTION 16‑25‑520.** Purpose of community domestic violence coordinating council.

 The purpose of a community domestic violence coordinating council is to:

 (1) increase the awareness and understanding of domestic violence and its consequences;

 (2) reduce the incidence of domestic violence in the county or area served; and

 (3) enhance and ensure the safety of battered individuals and their children.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

**SECTION 16‑25‑530.** Duties and responsibilities.

 The duties and responsibilities of a community domestic violence coordinating council include, but are not limited to:

 (1) promoting effective strategies of intervention for identifying the existence of domestic violence and for intervention by public and private agencies;

 (2) establishing interdisciplinary and interagency protocols for intervention with survivors of domestic violence;

 (3) facilitating communication and cooperation among agencies and organizations that are responsible for addressing domestic violence;

 (4) monitoring, evaluating, and improving the quality and effectiveness of domestic violence services and protections in the community;

 (5) providing public education and prevention activities; and

 (6) providing professional training and continuing education activities.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

**SECTION 16‑25‑540.** Membership.

 Membership on a community domestic violence coordinating council may include, but is not limited to, representatives from magistrates court, family court, law enforcement, solicitor’s office, probation and parole, batterer intervention programs or services, nonprofit battered individual’s program advocates, counseling services for children, legal services, victim assistance programs, the medical profession, substance abuse counseling programs, the clergy, survivors of domestic violence, local department of social services, and the education community. Members on the council shall develop memoranda of agreement among and between themselves to ensure clarity of roles and responsibilities in providing services to victims of domestic violence.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

**SECTION 16‑25‑550.** Revenue generation for operation and administration.

 Each community domestic violence coordinating council is responsible for generating revenue for its operation and administration.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.