~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 22, 2009

**S. 153**

Introduced by Senators Campsen and Leventis

S. Printed 4/22/09--S.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 153) to amend the 1976 Code to enact the “Home Invasion Protection Act”, by adding Section 16-11-395 to establish the offenses of home invasion in the first, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Article 5, Chapter 11, Title 16 of the 1976 Code is amended by adding:

“Section 16‑11‑320. (A) For purposes of this section, ‘dwelling’ means its definition found in Section 16-11-10 and Section 16‑11‑310.

(B) A person is guilty of home invasion if the person:

(1) enters a dwelling without consent or enters a dwelling by using deception, artifice, trick, or misrepresentation to gain consent to enter from a person in the dwelling;

(2) with intent to commit a crime in the dwelling;

(3) a person is present in the dwelling who is not a participant in the crime; and

(4) when, in effecting entry or while in the dwelling or in immediate flight, a participant in the crime causes physical injury or threatens to cause physical injury to a person who is not a participant in the crime.

(C) This section does not apply to a law enforcement officer acting within the scope of the officer’s official duties.

(D) Home invasion is a felony punishable by life imprisonment. For purposes of this section, ‘life’ means until death. The court, in its discretion, may sentence the defendant to a term of not less than twenty years.

(E) A person may not be convicted for a violation of this section and a violation of Section 16-11-311, 16-11-312, or 16-11-313 for the same incident.”

SECTION 2. Section 16‑1‑60 of the 1976 Code is amended to read:

“Section 16‑1‑60. For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16‑3‑10); criminal sexual conduct in the first and second degree (Sections 16‑3‑652 and 16‑3‑653); criminal sexual conduct with minors, first and second degree (Section 16‑3‑655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16‑3‑656); assault and battery with intent to kill (Section 16‑3‑620); kidnapping (Section 16‑3‑910); voluntary manslaughter (Section 16‑3‑50); armed robbery (Section 16‑11‑330(A)); attempted armed robbery (Section 16‑11‑330(B)); carjacking (Section 16‑3‑1075); drug trafficking as defined in Section 44‑53‑370(e) or trafficking cocaine base as defined in Section 44‑53‑375(C); manufacturing or trafficking methamphetamine as defined in Section 44‑53‑375; arson in the first degree (Section 16‑11‑110(A)); arson in the second degree (Section 16‑11‑110(B)); burglary in the first degree (Section 16‑11‑311); burglary in the second degree (Section 16‑11‑312(B)); home invasion (Section 16‑11‑320); engaging a child for a sexual performance (Section 16‑3‑810); homicide by child abuse (Section 16‑3‑85(A)(1)); aiding and abetting homicide by child abuse (Section 16‑3‑85(A)(2)); inflicting great bodily injury upon a child (Section 16‑3‑95(A)); allowing great bodily injury to be inflicted upon a child (Section 16‑3‑95(B)); criminal domestic violence of a high and aggravated nature (Section 16‑25‑65); abuse or neglect of a vulnerable adult resulting in death (Section 43‑35‑85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43‑35‑85(E)); accessory before the fact to commit any of the above offenses (Section 16‑1‑40); attempt to commit any of the above offenses (Section 16‑1‑80); and taking of a hostage by an inmate (Section 24‑13‑450). Only those offenses specifically enumerated in this section are considered violent offenses.”

SECTION 3. Section 16‑3‑20(C)(a)(1) of the 1976 Code is amended to read:

“(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

(b) kidnapping;

(c) burglary in any degree;

(d) robbery while armed with a deadly weapon;

(e) larceny with use of a deadly weapon;

(f) killing by poison;

(g) drug trafficking as defined in Section 44‑53‑370(e), 44‑53‑375(B), 44‑53‑440, or 44‑53‑445;

(h) physical torture; ~~or~~

(i) dismemberment of a person; or

(j) home invasion (Section 16‑11‑320).”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

JOHN M. KNOTTS, JR. for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

Judicial Department

The department indicates this bill will have a minimal impact on the General Fund of the State, which can be absorbed by the agency at the current level of funding.

Department of Corrections

The department indicates this bill will have an impact on the General Fund of the State; however the lack of empirical data prevents them from providing an estimated cost. The introduction of the new offense of Home Invasion in the First, Second and Third Degrees and their mandatory minimum sentences means longer imprisonment with no good time credits or early parole. The average annual total cost per inmate is $14,344 which includes housing, security, transportation and direct variable cost. Variable cost per inmate alone is approximately $2,900 which covers food, clothing and incidentals.

Department of Juvenile Justice

The department states this bill would have no impact on the General Fund of the State or on federal and/or other funds.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND THE 1976 CODE TO ENACT THE “HOME INVASION PROTECTION ACT”, BY ADDING SECTION 16‑11‑395 TO ESTABLISH THE OFFENSES OF HOME INVASION IN THE FIRST, SECOND, AND THIRD DEGREES, AND TO PROVIDE GRADUATED PENALTIES; TO AMEND SECTION 16‑1‑60, RELATING TO VIOLENT OFFENSES, TO INCLUDE HOME INVASION, FIRST AND SECOND DEGREE; AND TO AMEND SECTION 16‑3‑20, RELATING TO THE PUNISHMENT FOR MURDER, TO INCLUDE AS A SEPARATE STATUTORY AGGRAVATING CIRCUMSTANCE WHICH MAY BE CONSIDERED IN THE DETERMINATION OF WHETHER THE DEATH PENALTY SHOULD BE IMPOSED, A MURDER COMMITTED WHILE IN THE COMMISSION OF THE OFFENSE OF HOME INVASION IN THE FIRST DEGREE.

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

SECTION 1. This act may be cited as the “Home Invasion Protection Act”.

SECTION 2. Article 5, Chapter 11, Title 16 of the 1976 Code is amended by adding:

“Section 16‑11‑395. (A) As used in this section, the term:

(1) ‘dwelling’ is as defined in Section 16‑11‑310;

(2) ‘enters a dwelling without consent’ is as defined in Section 16‑11‑310;

(3) ‘dangerous weapon’ means a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, dirk, slingshot, metal knuckles, razor, other deadly weapon, or another item that appears to be one of these;

(B) A person is guilty of home invasion in the first degree if the person:

(1) enters a dwelling without consent;

(2) with the intent to commit a felony, larceny, or assault in the dwelling;

(3) is armed with a dangerous weapon; and

(4) personally uses a dangerous weapon that proximately causes great bodily harm, permanent disability or disfigurement, or death to a person who is lawfully present in the dwelling.

(C) A person is guilty of home invasion in the second degree if the person:

(1) enters a dwelling without consent;

(2) with the intent to commit a felony, larceny, or assault in the dwelling;

(3) is armed with a dangerous weapon; and

(4) uses force or threatens the use of force on a person who is lawfully present in the dwelling.

(D) A person is guilty of home invasion in the third degree if the person:

(1) enters a dwelling without consent;

(2) with the intent to commit a felony, larceny, or assault in the dwelling;

(3) is armed with a dangerous weapon; and

(4) another person is lawfully present in the dwelling.

(E) This section does not apply to a law enforcement officer acting within the scope of his official duties.

(F) A person who violates the provisions of home invasion in the first degree is guilty of a felony and, upon conviction, must be imprisoned for a period of years up to life in prison, but not less than a mandatory minimum term of twenty‑five years, no part of which may be suspended or probation granted, and which must be served consecutively to another sentence imposed.

(G) A person who violates the provisions of home invasion in the second degree is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than twenty years, no part of which may be suspended or probation granted, and which must be served consecutively to another sentence imposed.

(H) A person who violates the provisions of home invasion in the third degree is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than fifteen years, no part of which may be suspended or probation granted, and which must be served consecutively to another sentence imposed.

(I) A person sentenced to a mandatory minimum term of imprisonment pursuant to this section is not eligible for parole or an early release program, nor is the person eligible to receive work credits, education credits, good conduct credits, or other credits that would reduce the mandatory minimum term of imprisonment required by this section.”

SECTION 3. Section 16‑1‑60 of the 1976 Code is amended to read:

“Section 16‑1‑60. For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16‑3‑10); criminal sexual conduct in the first and second degree (Sections 16‑3‑652 and 16‑3‑653); criminal sexual conduct with minors, first and second degree (Section 16‑3‑655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16‑3‑656); assault and battery with intent to kill (Section 16‑3‑620); kidnapping (Section 16‑3‑910); voluntary manslaughter (Section 16‑3‑50); armed robbery (Section 16‑11‑330(A)~~)~~; attempted armed robbery (Section 16‑11‑330(B)); carjacking (Section 16‑3‑1075); drug trafficking as defined in Section 44‑53‑370(e) or trafficking cocaine base as defined in Section 44‑53‑375(C); manufacturing or trafficking methamphetamine as defined in Section 44‑53‑375; arson in the first degree (Section 16‑11‑110(A)); arson in the second degree (Section 16‑11‑110(B)); burglary in the first degree (Section 16‑11‑311); burglary in the second degree (Section 16‑11‑312(B)); home invasion in the first and second degree (Section 16‑11‑395); engaging a child for a sexual performance (Section 16‑3‑810); homicide by child abuse (Section 16‑3‑85(A)(1)); aiding and abetting homicide by child abuse (Section 16‑3‑85(A)(2)); inflicting great bodily injury upon a child (Section 16‑3‑95(A)); allowing great bodily injury to be inflicted upon a child (Section 16‑3‑95(B)); criminal domestic violence of a high and aggravated nature (Section 16‑25‑65); abuse or neglect of a vulnerable adult resulting in death (Section 43‑35‑85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43‑35‑85(E)); accessory before the fact to commit any of the above offenses (Section 16‑1‑40); attempt to commit any of the above offenses (Section 16‑1‑80); and taking of a hostage by an inmate (Section 24‑13‑450). Only those offenses specifically enumerated in this section are considered violent offenses.”

SECTION 4. Section 16‑3‑20(C)(a)(1) of the 1976 Code is amended to read:

“(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

(b) kidnapping;

(c) burglary in any degree;

(d) robbery while armed with a deadly weapon;

(e) larceny with use of a deadly weapon;

(f) killing by poison;

(g) drug trafficking as defined in Section 44‑53‑370(e), 44‑53‑375(B), 44‑53‑440, or 44‑53‑445;

(h) physical torture; ~~or~~

(i) dismemberment of a person; or

(j) home invasion in the first degree as defined in Section 16‑11‑400(B).”

SECTION 5. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 6. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 7. This act takes effect upon approval by the Governor.

‑‑‑‑XX‑‑‑‑