~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE AMENDMENT AMENDED AND ADOPTED

May 13, 2009

**H. 3677**

Introduced by Rep. Cobb‑Hunter

S. Printed 5/13/09--S.

Read the first time May 5, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING THE “VIOLENCE AGAINST WOMEN FEDERAL COMPLIANCE ACT” TO CONFORM STATE LAW TO FEDERAL REQUIREMENTS BY AMENDING SECTION 16‑3‑740 RELATING TO TESTING CERTAIN CRIMINALS FOR HEPATITIS B AND THE HUMAN IMMUNODEFICIENCY VIRUS AT THE REQUEST OF A VICTIM, SO AS TO REVISE THE DEFINITION OF “OFFENDER” TO INCLUDE ADULTS AND JUVENILES, TO CLARIFY PROCEDURES FOR DISCLOSING TEST RESULTS, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL SHALL ADVISE THE VICTIM OF AVAILABLE TREATMENT OPTIONS, AND UPON REQUEST OF THE VICTIM PROVIDE TESTING AND POST‑TESTING COUNSELING; BY ADDING SECTION 16‑3‑750 SO AS TO PROHIBIT LAW ENFORCEMENT AND PROSECUTING OFFICERS FROM ASKING OR REQUIRING A VICTIM OF AN ALLEGED CRIMINAL SEXUAL CONDUCT OFFENSE TO SUBMIT TO A POLYGRAPH EXAMINATION AND TO PROVIDE THAT REFUSAL OF A VICTIM TO SUBMIT TO SUCH AN EXAMINATION DOES NOT PREVENT THE INVESTIGATION, CHARGING, OR PROSECUTION OF THE OFFENSE; TO AMEND SECTION 16‑3‑1350 RELATING TO MEDICOLEGAL EXAMINATIONS FOR VICTIMS OF CRIMINAL SEXUAL CONDUCT OR CHILD SEX ABUSE, SO AS TO DELETE THE PROVISION REQUIRING SUCH A VICTIM TO FILE AN INCIDENT REPORT WITH A LAW ENFORCEMENT AGENCY IN ORDER TO RECEIVE A MEDICOLEGAL EXAMINATION WITHOUT CHARGE; TO AMEND SECTION 16‑3‑177, AS AMENDED, RELATING TO THE FORM AND CONTENT OF A RESTRAINING ORDER, SO AS TO PROVIDE CIRCUMSTANCES UNDER WHICH A PERSON SUBJECT TO A RESTRAINING ORDER MAY NOT SHIP, TRANSPORT, OR POSSESS A FIREARM; BY ADDING SECTION 16‑25‑30 SO AS TO PROVIDE THAT A PERSON CONVICTED OF CRIMINAL DOMESTIC VIOLENCE OR CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE MUST BE NOTIFIED IN WRITING THAT IT IS UNLAWFUL FOR SUCH A DEFENDANT TO SHIP, TRANSPORT, OR POSSESS A FIREARM; AND TO AMEND SECTION 20‑4‑60, AS AMENDED, RELATING TO THE FORM AND CONTENT OF AN ORDER OF PROTECTION FROM DOMESTIC VIOLENCE, SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON SUBJECT TO AN ORDER OF PROTECTION TO SHIP, TRANSPORT, OR POSSESS A FIREARM.

Amend Title To Conform

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

SECTION 1. This act may be cited as the “Violence Against Women Federal Compliance Act” and is intended to bring South Carolina into compliance with the federal Violence Against Women Act.

SECTION 2. Section 16‑3‑740(A) of the 1976 Code is amended to read:

“Section 16‑3‑740. (A) For purposes of this section:

(1) ‘Body fluid’ means blood, amniotic fluid, pericardial fluid, pleural fluid, synovial fluid, cerebrospinal fluid, semen or vaginal secretions, or any body fluid visibly contaminated with blood.

(2) ‘HIV’ means the human immunodeficiency virus.

(3) ‘Offender’ includes ~~a person under seventeen years of age~~ adults and juveniles.”

SECTION 3. Section 16‑3‑740(C) of the 1976 Code is amended to read:

“(C) The tests must be administered by the Department of Health and Environmental Control through the local county health department or the medical professional at the state or local detention facility where the offender is imprisoned or detained. ~~If the tests are performed prior to conviction or adjudication, the results of the tests must be reported only to the solicitor who obtained the court order.~~ The solicitor shall notify the following persons of the tests results:

(1) the victim or the legal guardian of a victim who is a minor or is mentally retarded or mentally incapacitated;

(2) the victim’s attorney;

(3) the offender and a juvenile offender’s parent or guardian; and

(4) the offender’s attorney.

The results of the tests shall be provided to the designated recipients with the following disclaimer: ‘The tests were conducted in a medically approved manner, but tests cannot determine infection by Hepatitis B or HIV with absolute accuracy. Additionally, the testing does not determine exposure to, or infection by, other sexually transmitted diseases. Persons receiving the tests results should continue to monitor their own health, seek retesting in approximately six months, and should consult a physician as appropriate’.

The solicitor also shall provide to the state or local correctional facility where the offender is imprisoned or detained and the Department of Health and Environmental Control the test results for HIV and Hepatitis B which indicate that the offender is infected with the disease. The state or local correctional facility where the offender is imprisoned or detained shall use this information solely for the purpose of providing medical treatment to the offender while the offender is imprisoned or detained. The State shall pay for the tests. If the offender is subsequently convicted or adjudicated delinquent, the offender or the parents of an adjudicated offender must reimburse the State for the costs of the tests unless the offender or the parents of the adjudicated offender are determined to be indigent.

If the tests given pursuant to this section indicate infection by Hepatitis B or HIV, the Department of Health and Environmental Control shall be provided with all tests results and must provide counseling to the offender regarding the disease, syndrome, or virus. The Department of Health and Environmental Control must ~~also~~ provide ~~testing and~~ counseling for the victim, advise the victim of available medical treatment options, ~~at the victim’s request and referral~~ refer the victim to ~~for~~ appropriate health care and support services, and, at the request of the victim or the legal guardian of a victim, test the victim for HIV and Hepatitis B and provide post‑testing counseling to the victim.”

SECTION 4. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑750. A law enforcement officer, prosecuting officer, or other governmental official may request that the victim of an alleged criminal sexual conduct offense as defined under federal or South Carolina law submit to a polygraph examination or other truth telling device as part of the investigation, charging, or prosecution of the offense if the credibility of the victim is at issue; however, the officer or official must not require the victim to submit to a polygraph examination or other truth telling device as a condition for proceeding with the investigation, charging, or prosecution of the offense.”

SECTION 5. Section 16‑3‑1350(A) and (B) of the 1976 Code is amended to read:

“(A) The State must ensure that a victim of criminal sexual conduct in any degree, criminal sexual conduct with a minor in any degree, or child sexual abuse must not bear the cost of his or her routine medicolegal exam following the assault ~~if the victim has filed an incident report with a law enforcement agency~~.

(B) These exams must be standardized relevant to medical treatment and to gathering evidence from the body of the victim and must be based on and meet minimum standards for rape exam protocol as developed by the South Carolina Law Enforcement Division, the South Carolina Hospital Association, and the Governor’s Office Division of Victim Assistance with production costs to be paid from funds appropriated for the Victim’s Compensation Fund. These exams must include treatment for ~~venereal disease~~ sexually transmitted diseases, and must include medication for pregnancy prevention if indicated and if desired. The South Carolina Law Enforcement Division must distribute these exam kits to any licensed health care facility providing sexual assault exams. When dealing with a victim of criminal sexual assault, the law enforcement agency immediately must transport the victim to the nearest licensed health care facility which performs sexual assault exams. A health care facility providing sexual assault exams must use the standardized protocol described ~~above~~ in this subsection.”

SECTION 6. Chapter 25, Title 16 of the 1976 Code is amended by adding:

“Section 16‑25‑30. At the time a person is convicted of violating the provisions of Section 16‑25‑20 or 16‑25‑65, the court must deliver to the person a written form that conspicuously bears the following language: ‘Pursuant to 18 USC Section 922, it is unlawful for a person convicted of a violation of Section 16‑25‑20 or 16‑25‑65 to ship, transport, possess, or receive a firearm or ammunition’.”

SECTION 7. 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 8. 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 9. This act takes effect upon approval by the Governor.

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