~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

April 15, 2009

**S. 512**

Introduced by Senators Lourie, Anderson, Nicholson, Knotts, Cromer, Leventis and L. Martin

S. Printed 4/15/09--S. [SEC 4/16/09 2:03 PM]

Read the first time March 3, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 512) to amend Section 16‑3‑740 of the 1976 Code, relating to testing for Hepatitis B and HIV for offenders and victims of certain crimes, to bring the provisions, 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. 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.”

SECTION 6. Section 20‑4‑60(B) of the 1976 Code is amended to read:

“(B) Every order of protection issued pursuant to this chapter shall conspicuously bear the following language:

(1) ‘Violation of this order is a criminal offense punishable by thirty days in jail or a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars~~.~~’; ~~and~~

(2) ‘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~~.~~’; and

(3) ‘Pursuant to 18 USC Section 922, it is unlawful for a person who is subject to an order of protection to ship, transport, possess, or receive a firearm or ammunition’.”

SECTION 7. Chapter 25, Title 16 of the 1976 Code is amended by adding:

“Section 16‑25‑30. At the time of conviction, the court must deliver, to any person convicted of violating the provisions of Section 16‑25‑20 or 16‑25‑65, a written form which 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 8. Section 16‑3‑1770 of the 1976 Code is amended to read:

“Section 16‑3‑1770. (A) A temporary restraining order granted without notice must be endorsed with the date and hour of issuance and entered of record with the magistrates court.

(B) The terms of the restraining order must protect the plaintiff and may include temporarily enjoining the defendant from:

(1) abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff’s family;

(2) entering or attempting to enter the plaintiff’s place of residence, employment, education, or other location; and

(3) communicating or attempting to communicate with the plaintiff in a way that would violate the provisions of this article.

(C) A restraining order issued pursuant to this article conspicuously must bear the following language:

(1) ‘Violation of this order is a criminal offense punishable by thirty days in jail, a fine of five hundred dollars, or both~~.~~’; ~~and~~

(2) ‘Pursuant to Section 16‑25‑125, 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~~.~~’~~.~~; and

(3) Pursuant to 18 USC Section 922, it is unlawful for a person who is subject to a restraining order to ship, transport, possess, or receive a firearm or ammunition if the order:

(a) was issued after a hearing of which such person received actual notice and had an opportunity to participate;

(b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily harm.

(D) A restraining order issued by a court may not contain the social security number of a party to the order and must contain as little identifying information as is necessary of the party it seeks to protect.”

SECTION 9. 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 10. 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 11. 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:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost to Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

Governor’s Office—Executive Policy & Programs (OEPP)

A review of this bill by the office indicates the number of eligible claims could increase by ten percent resulting in an additional cost of approximately $60,000 to be paid from other funds (Victims’ Compensation Fund).

Other Agencies

The Judicial Department, Department of Health & Environmental Control, and State Law Enforcement Division each indicate this bill would have either no impact or minimal impact on agency expenditures which can be absorbed within existing resources.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 16‑3‑740 OF THE 1976 CODE, RELATING TO TESTING FOR HEPATITIS B AND HIV FOR OFFENDERS AND VICTIMS OF CERTAIN CRIMES, TO BRING THE PROVISIONS INTO COMPLIANCE WITH THE FEDERAL VIOLENCE AGAINST WOMEN ACT; TO AMEND CHAPTER 3, TITLE 16, BY ADDING SECTION 16‑3‑750, RELATING TO REQUIRING VICTIMS OF CERTAIN CRIMES TO SUBMIT TO POLYGRAPH EXAMINATIONS, TO MANDATE THE INVESTIGATIVE AND PROSECUTORIAL PROCEDURES OF CERTAIN CRIMES IN SOUTH CAROLINA COMPLY WITH THE FEDERAL VIOLENCE AGAINST WOMEN ACT; TO AMEND SECTION 16‑3‑1350, RELATING COST OF MEDICOLEGAL EXAM FOR VICTIMS OF CERTAIN CRIMES, TO PREVENT THE VICTIM OF CERTAIN CRIMES FROM BEARING THE COST OF THE EXAM AS REQUIRED BY THE FEDERAL VIOLENCE AGAINST WOMEN ACT; TO AMEND SECTION 20‑4‑60, RELATING TO THE CONTENT OF ORDERS OF PROTECTION, TO BRING THE PROVISIONS INTO COMPLIANCE WITH THE FEDERAL VIOLENCE AGAINST WOMEN ACT; TO AMEND CHAPTER 25, TITLE 16 OF THE 1976 CODE, BY ADDING SECTION 16‑25‑30, RELATING TO OFFENDERS CONVICTED OF CERTAIN CRIMES, TO REQUIRE NOTIFICATION OF FEDERAL LAW BE PROVIDED UPON CONVICTION AS REQUIRED BY THE FEDERAL VIOLENCE AGAINST WOMEN ACT; AND TO AMEND SECTION 16‑3‑1770, RELATING TO THE CONTENT OF RESTRAINING ORDERS, TO BRING THE PROVISIONS INTO COMPLIANCE WITH THE FEDERAL VIOLENCE AGAINST WOMEN ACT.

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), (B), and (C) and 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.

(B) Upon the request of a victim who has been exposed to body fluids during the commission of a criminal offense, or upon the request of ~~the legal guardian of~~ a victim who has been exposed to body fluids during the commission of a criminal offense, or the legal guardian of such a victim, the solicitor must, at any time after the offender is charged, or at any time after a petition has been filed against an offender in family court, petition the court to have the offender tested for Hepatitis B and HIV. An offender must not be tested under this section for Hepatitis B and HIV without a court order. To obtain a court order, the solicitor must demonstrate the following:

(1) the victim or the victim’s legal guardian requested the tests;

(2) there is probable cause that the offender committed the offense;

(3) there is probable cause that during the commission of the offense there was a risk that body fluids were transmitted from one person to another; and

(4) the offender has received notice of the petition and notice of his right to have counsel represent him at a hearing.

The results of the tests must be kept confidential and disclosed only to the solicitor who obtained the court order. The solicitor shall then notify only those persons designated in subsection (C).

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

“Section 16‑3‑750. (A) No law enforcement officer, prosecuting officer, or other governmental official shall ask or require an adult, youth, or child victim of an alleged criminal sexual conduct offense as defined under federal, tribal, state, territorial, or local law to submit to a polygraph examination or other truth telling device.

(B) The refusal of a victim to submit to an examination described in subsection (A) of this section shall not prevent the investigation, charging, or prosecution of the offense.”

SECTION 4. 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.”

SECTION 5. Section 20‑4‑60(B) of the 1976 Code is amended to read:

“(B) Every order of protection issued pursuant to this chapter shall conspicuously bear the following language:

(1) ‘Violation of this order is a criminal offense punishable by thirty days in jail or a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars.’; ~~and~~

(2) ‘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.’; and

(3) ‘Pursuant to 18 USC Section 922, it is unlawful for a person who is subject to an order of protection to ship, transport, possess, or receive a firearm or ammunition.’”

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

“Section 16‑25‑30. At the time of conviction, the court must deliver, to any person convicted of violating the provisions of Section 16‑25‑20 or 16‑25‑65, a written form which 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. Section 16‑3‑1770 of the 1976 Code is amended to read:

“Section 16‑3‑1770. (A) ~~A temporary restraining order granted without notice must be endorsed with the date and hour of issuance and entered of record with the magistrates court.~~

~~(B)~~ The terms of the restraining order must protect the plaintiff and may include temporarily enjoining the defendant from:

(1) abusing, threatening to abuse, or molesting the plaintiff or members of the plaintiff’s family;

(2) entering or attempting to enter the plaintiff’s place of residence, employment, education, or other location; and

(3) communicating or attempting to communicate with the plaintiff in a way that would violate the provisions of this article.

(~~C~~B) A restraining order issued pursuant to this article conspicuously must bear the following language:

(1) ‘Violation of this order is a criminal offense punishable by thirty days in jail, a fine of five hundred dollars, or both.’; ~~and~~

(2) ‘Pursuant to Section 16‑25‑125, 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.’~~.~~; and

(3) ‘Pursuant to 18 USC Section 922, it is unlawful for a person who is subject to a restraining order to ship, transport, possess, or receive a firearm or ammunition if the order:

(a) was issued after a hearing of which such person received actual notice and had an opportunity to participate;

(b) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and

(c) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child, or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily harm.’

(~~D~~C) A restraining order issued by a court may not contain the social security number of a party to the order and must contain as little identifying information as is necessary of the party it seeks to protect.

(D) A temporary restraining order granted without notice must be endorsed with the date and hour of issuance and entered of record with the magistrates court.”

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

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