~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 28, 2012

**S. 148**

Introduced by Senators Campsen, Rose, Verdin, McConnell and Alexander

S. Printed 3/28/12--S.

Read the first time January 11, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 148) to amend the Code of Laws of South Carolina, 1976, so as to enact the “Home Invasion Protection Act”, by adding Section 16‑11‑320 to establish, 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 “Home Invasion Protection Act”.

SECTION 2. Section 16-11-311 of the 1976 Code is amended to read:

“Section 16-11-311. (A) A person is guilty of burglary in the first degree if the person enters a dwelling without consent and with intent to commit a crime in the dwelling, and either:

(1) when, in effecting entry or while in the dwelling or in immediate flight, ~~he~~ the person or another participant in the crime:

(a) is armed with a deadly weapon or explosive; ~~or~~

(b) causes physical injury to a person who is not a participant in the crime; ~~or~~

(c) uses or threatens the use of a dangerous instrument; or

(d) displays what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; ~~or~~

(2) the burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both; or

(3) the entering or remaining occurs in the nighttime.

(B) Burglary in the first degree is a felony punishable by life imprisonment. For purposes of this section, ‘life’ means until death. ~~The~~ If the burglary involves an element of subitem (A)(2), (A)(3), or subitems (A)(2) and (A)(3), but does not involve an element of subitem (A)(1), the court, in its discretion, may sentence the defendant to a term of not less than fifteen years. If the burglary involves an element of subitem (A)(1), and a person who is not a participant in the crime is present in the dwelling, the court, in its discretion, may sentence the defendant to a term of not less than twenty years.”

SECTION 3. 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 4. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

GEORGE E. CAMPSEN III 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:**

The Judicial Department

The department indicates that enactment of this bill will have a minimal impact on the General Fund of the State and can be absorbed by the agency at their current level of funding. However, should the case load increase for general sessions and becomes burdensome, and then consideration of additional judges and staff to handle the additional case load would be requested.

The Department of Probation, Parole and Pardon Services

The department indicates that enactment of this bill will have no fiscal impact on the General Fund of the State, or on federal and/or other funds.

The Department of Corrections

The department indicates that enactment of this bill could have a fiscal impact on the General Fund of the State due to longer sentences, but due to the lack of empirical data available to the agency, they are unable to provide an accurate projection of what those costs may be. The bill replaces the offenses of Burglary 1st Degree and Burglary 2nd Degree with a minimum mandatory sentence of 20 years. The department will be housing the offenders, on average 11 years, 4 months longer than the current offenders. In FY 2011, the department took in 266 new inmates under the offenses of Burglary 1st or 2nd Degrees.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “HOME INVASION PROTECTION ACT”, BY ADDING SECTION 16‑11‑320 TO ESTABLISH THE OFFENSE OF HOME INVASION, AND TO PROVIDE A PENALTY; TO AMEND SECTION 16‑1‑60, AS AMENDED, RELATING TO VIOLENT OFFENSES, SO AS TO INCLUDE HOME INVASION; AND TO AMEND SECTION 16‑3‑20, AS AMENDED, RELATING TO THE PUNISHMENT FOR MURDER, SO AS 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.

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 16‑11‑320. (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 3. Section 16‑1‑60 of the 1976 Code, as last amended by Act 289 of 1010, is further 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); attempted murder (Section 16‑3‑29); assault and battery by mob, first degree, resulting in death (Section 16‑3‑210(B)), 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); assault and battery of a high and aggravated nature (Section 16‑3‑600(B)); kidnapping (Section 16‑3‑910); trafficking in persons (Section 16‑3‑930); 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)); taking of a hostage by an inmate (Section 24‑13‑450); detonating a destructive device upon the capitol grounds resulting in death with malice (Section 10‑33‑325(B)(1)); spousal sexual battery (Section 16‑3‑615); producing, directing, or promoting sexual performance by a child (Section 16‑3‑820); lewd act upon a child under sixteen (Section 16‑15‑140); sexual exploitation of a minor first degree (Section 16‑15‑395); sexual exploitation of a minor second degree (Section 16‑15‑405); promoting prostitution of a minor (Section 16‑15‑415); participating in prostitution of a minor (Section 16‑15‑425); aggravated voyeurism (Section 16‑17‑470(C)); detonating a destructive device resulting in death with malice (Section 16‑23‑720(A)(1)); detonating a destructive device resulting in death without malice (Section 16‑23‑720(A)(2)); boating under the influence resulting in death (Section 50‑21‑113(A)(2)); vessel operator’s failure to render assistance resulting in death (Section 50‑21‑130(A)(3)); damaging an airport facility or removing equipment resulting in death (Section 55‑1‑30(3)); failure to stop when signaled by a law enforcement vehicle resulting in death (Section 56‑5‑750(C)(2)); interference with traffic‑control devices, railroad signs, or signals resulting in death (Section 56‑5‑1030(B)(3)); hit and run resulting in death (Section 56‑5‑1210(A)(3)); felony driving under the influence or felony driving with an unlawful alcohol concentration resulting in death (Section 56‑5‑2945(A)(2)); putting destructive or injurious materials on a highway resulting in death (Section 57‑7‑20(D)); obstruction of a railroad resulting in death (Section 58‑17‑4090); accessory before the fact to commit any of the above offenses (Section 16‑1‑40); and attempt to commit any of the above offenses (Section 16‑1‑80). 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, as last amended by Act 289 of 2010, is further amended by adding an appropriately lettered subitem at the end to read:

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

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.

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