**A** **BILL**

TO AMEND CHAPTER 1, TITLE 16 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO FELONIES AND MISDEMEANORS, BY ADDING SECTION 16-1-140 SO AS TO PROVIDE FOR AN INCREASE IN THE PENALTY FOR AN UNDERLYING OFFENSE IF THE OFFENDER INTENTIONALLY SELECTED THE PERSON AGAINST WHOM THE CRIME IS COMMITTED OR SELECTED THE PROPERTY THAT IS DAMAGED OR OTHERWISE AFFECTED BY THE CRIME IN WHOLE OR IN PART BECAUSE OF THE OFFENDER'S BELIEF OR PERCEPTION REGARDING THE RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, ANCESTRY, RELIGION, GENDER, SEXUAL ORIENTATION, OR DISABILITY OF THAT PERSON OR THE OWNER OR OCCUPANT OF THAT PROPERTY, WHETHER OR NOT THE OFFENDER'S BELIEF OR PERCEPTION WAS CORRECT; AND TO AMEND SECTION 63‑19‑1410, RELATING TO DISPOSITIONAL POWERS OF THE FAMILY COURT REGARDING CHILDREN ADJUDICATED DELINQUENT, SO AS TO AUTHORIZE THE COURT TO MAKE FINDINGS THAT A CHILD INTENTIONALLY SELECTED THE PERSON AGAINST WHOM AN OFFENSE IS COMMITTED OR SELECTED THE PROPERTY THAT IS DAMAGED OR OTHERWISE AFFECTED BY THE OFFENSE IN WHOLE OR IN PART BECAUSE OF THE CHILD'S BELIEF OR PERCEPTION REGARDING THE RACE, COLOR, ETHNICITY, NATIONAL ORIGIN, ANCESTRY, RELIGION, GENDER, SEXUAL ORIENTATION, OR DISABILITY OF THAT PERSON OR THE OWNER OR OCCUPANT OF THAT PROPERTY, WHETHER OR NOT THE CHILD'S BELIEF OR PERCEPTION WAS CORRECT AND ORDER A CHILD FOR WHOM SUCH FINDINGS ARE MADE, AS A CONDITION OF PROBATION, COMMITMENT OR OTHERWISE, TO PARTICIPATE IN AN EDUCATIONAL PROGRAM REGARDING CULTURAL DIVERSITY.

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

SECTION 1. This act shall be cited as the “Hate Crime Penalty Enhancement Act”.

SECTION 2. Chapter 1, Title 16 of the 1976 Code is amended by adding:

“Section 16‑1‑140. (A) Following a conviction for a crime classified or exempted under Section 16‑1‑10 or a common law crime, the court may consider as an aggravating circumstance subject to increased penalties, as provided in subsection (B), evidence that the defendant intentionally selected the person against whom the crime was committed or selected the property that was damaged or otherwise affected by the crime in whole or in part because of the offender’s belief or perception regarding the race, color, ethnicity, national origin, ancestry, religion, gender, sexual orientation, or disability of that person or the owner or occupant of that property, whether or not the offender’s belief or perception was correct.

(B)(1) If the crime committed under subsection (A) is ordinarily a felony, the maximum period of imprisonment provided for the offense may be increased by not more than five years.

(2) If the crime committed under subsection (A) is ordinarily a Class A misdemeanor, the maximum period of imprisonment provided for the offense may be increased to not more than four years.

(3) If the crime committed under subsection (A) is ordinarily a misdemeanor other than a Class A misdemeanor, the maximum period of imprisonment provided for the offense may be increased to not more than three years.

(C) This section provides for the enhancement of the penalties applicable for the underlying crime if the court finds that the aggravating circumstances specified in subsection (A) exist. The defendant may present evidence of mitigating circumstances in order to avoid the enhancement of penalties under this section.

(D) The decision to seek sentencing under this section is in the discretion of the solicitor. When the solicitor determines to seek sentencing of a defendant under this section, written notice must be given by the solicitor to the defendant and defendant's counsel not less than ten days before trial.

(E) This section does not apply to any crime if proof of race, color, ethnicity, national origin, ancestry, religion, gender, sexual orientation, or disability, or proof of any person’s belief or perception regarding another person’s race, color, ethnicity, national origin, ancestry, religion, gender, sexual orientation, or disability is required for a conviction for that crime.”

SECTION 3. Section 63‑19‑1410(A) of the 1976 Code, as last amended by Act 268 of 2016, is amended to read:

“(A) When a child is found by decree of the court to be subject to this chapter, the court shall in its decree make a finding of the facts upon which the court exercises its jurisdiction over the child. Following the decree, the court by order may:

(1) cause a child concerning whom a petition has been filed to be examined or treated by a physician, psychiatrist, or psychologist and for that purpose place the child in a hospital or other suitable facility;

(2) order care and treatment as it considers best, except as otherwise provided in this section and may designate a state agency as the lead agency to provide a family assessment to the court. The assessment shall include, but is not limited to, the strengths and weaknesses of the family, problems interfering with the functioning of the family and with the best interests of the child, and recommendations for a comprehensive service plan to strengthen the family and assist in resolving these issues.

The lead agency shall provide the family assessment to the court in a timely manner, and the court shall conduct a hearing to review the proposed plan and adopt a plan as part of its order that will best meet the needs and best interest of the child. In arriving at a comprehensive plan, the court shall consider:

(a) additional testing or evaluation that may be needed;

(b) economic services including, but not limited to, employment services, job training, food stamps, and aid to families with dependent children;

(c) counseling services including, but not limited to, marital counseling, parenting skills, and alcohol and drug abuse counseling; and

(d) any other programs or services appropriate to the child’s and family’s needs.

The lead agency is responsible for monitoring compliance with the court‑ordered plan and shall report to the court as the court requires. In support of an order, the court may require the parents or other persons having custody of the child or any other person who has been found by the court to be encouraging, causing, or contributing to the acts or conditions which bring the child within the purview of this chapter to do or omit to do acts required or forbidden by law, when the judge considers the requirement necessary for the welfare of the child. In case of failure to comply with the requirement, the court may proceed against those persons for contempt of court;

(3) place the child on probation or under supervision in the child’s own home or in the custody of a suitable person elsewhere, upon conditions as the court may determine. A child placed on probation by the court remains under the authority of the court only until the expiration of the specified term of the child’s probation. This specified term of probation may expire before but not after the twentieth birthday of the child. Probation means casework services during a continuance of the case. Probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well‑being of the child and the child’s family. Probation methods must be directed to the discovery and correction of the basic causes of maladjustment and to the development of the child’s personality and character, with the aid of the social resources of the community. As a condition of probation, the court may order the child to participate in a community mentor program as provided for in Section 63‑19‑1430. The court may impose monetary restitution or participation in supervised work or community service, or both, as a condition of probation. The Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a constructive nature designed to make reparation and to promote the rehabilitation of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child’s particular role in causing this loss, and the child’s ability to pay the amount over a reasonable period of time. The Department of Juvenile Justice shall develop a system for the transferring of court‑ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen. As a condition of probation the court may impose upon the child a fine not exceeding two hundred dollars when the offense is one in which a magistrate, municipal, or circuit court judge has the authority to impose a fine. A fine may be imposed when commitment is suspended but not in addition to commitment;

(4) order the child to participate in a community mentor program as provided in Section 63‑19‑1430;

(5) commit the child to the custody or to the guardianship of a public or private institution or agency authorized to care for children or to place them in family homes or under the guardianship of a suitable person. Commitment must be for an indeterminate period but in no event beyond the child’s twenty‑second birthday;

(6) require that a child under twelve years of age who is adjudicated delinquent for an offense listed in Section 23‑3‑430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was adjudicated; ~~and~~

(7) dismiss the petition or otherwise terminate its jurisdiction at any time on the motion of either party or on its own motion~~.~~; and

(8) make findings that a child intentionally selected the person against whom an offense was committed or selected the property that was damaged or otherwise affected by the offense in whole or in part because of the child’s belief or perception regarding the race, color, ethnicity, national origin, cultural or social identity, ancestry, religion, gender, political affiliation, sexual orientation, or disability of that person or the owner or occupant of that property, whether or not the child’s belief or perception was correct, and order a child for whom such findings are made to participate in an educational program regarding cultural diversity.”

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

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