**South Carolina General Assembly**

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**H. 4669**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pace, Magnuson and Leber

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Summary: Criminal sexual conduct with a minor, death penalty

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

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 12/14/2023 House Referred to Committee on **Judiciary**

 1/9/2024 House Introduced and read first time (House Journal‑page 118)

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**VERSIONS OF THIS BILL**

[12/14/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4669_20231214.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 16-3-655, RELATING TO CRIMINAL SEXUAL CONDUCT WITH A MINOR, PENALTIES, and DEATH PENALTY AVAILABLE FOR CERTAIN REPEAT OFFENDERS, SO AS TO ALLOW THE DEATH PENALTY FOR PERSONS WHO COMMIT CRIMINAL SEXUAL CONDUCT WITH A VICTIM UNDER ELEVEN YEARS OF AGE AND DELETE THE REPEAT OFFENDER REQUIREMENT, and to clarify that both mitigating and aggravating factors pursuant to section 16-3-20, murder, are applicable.

Whereas, the South Carolina General Assembly believes that a person who is convicted of criminal sexual conduct with a victim who is less than eleven years of age creates a great risk of death and danger to the most precious and vulnerable members of this State; and

Whereas, such heinous crimes destroy the innocence of a young child and violate all standards of human decency held by civilized society; and

Whereas, the members of the South Carolina General Assembly assert that Kennedy v. Louisiana, 554 U.S. 407 (2008), was wrongly decided and infringes upon the power of the State to punish what it determines to be a monstrous and evil crime and punish those convicted as the State determines to be necessary and just. Now, therefore,

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

SECTION 1. Section 16-3-655(D) and (E) of the S.C. Code is amended to read:

 (D)(1) A person convicted of a violation of subsection (A)(1) is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum of twenty-five years, no part of which may be suspended nor probation granted, or must be imprisoned for life. Inor in the case of a person pleading guilty or nolo contendere to a violation of subsection (A)(1), the judge must make a specific finding on the record regarding whether the type of conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. In the case of a person convicted at trial for a violation of subsection (A)(1), the judge or jury, whichever is applicable, must designate as part of the verdict whether the conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. If the person has previously beenis convicted of, pled guilty or nolo contendere to, or is adjudicated delinquent for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out-of-state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age, he must be punished by death or by imprisonment for life, as provided in this section. For the purpose of determining a prior conviction under this subsection, the person must have been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent on a separate occasion, prior to the instant adjudication, for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out-of-state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age. In order to be eligible for the death penalty pursuant to this section, the sexual battery constituting the current offense and any prior offense must have involved sexual or anal intercourse by a person or intrusion by an object. If any prior offense that would make a person eligible for the death penalty pursuant to this section occurred prior to the effective date of this act and no specific finding was made regarding the nature of the conduct or is an out-of-state or federal conviction, the determination of whether the sexual battery constituting the prior offense involved sexual or anal intercourse by a person or intrusion by an object must be made in the separate sentencing proceeding provided in this section and proven beyond a reasonable doubt and designated in writing by the judge or jury, whichever is applicable. If the judge or jury, whichever is applicable, does not find that the prior offense involved sexual or anal intercourse by a person or intrusion by an object, then the person must be sentenced to imprisonment for life. For purposes of this subsection, imprisonment for life means imprisonment until death.

 (2) A person convicted of a violation of subsection (A)(2) is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than thirty years, no part of which may be suspended nor probation granted.

 (3) A person convicted of a violation of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years in the discretion of the court.

 (4) A person convicted of a violation of subsection (C) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than fifteen years, or both.

 (E) If the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to items (1) and (2), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, “life imprisonment” means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. No person sentenced to life imprisonment, pursuant to this subsection, is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. Under no circumstances may a female who is pregnant be executed, so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death imposed pursuant to this section to life imprisonment pursuant to the provisions of Section 14, Article IV of the Constitution of South Carolina, 1895, the commutee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

 (1) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pled guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States, or the State of South Carolina, or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.

 (2) In sentencing a person, upon conviction or adjudication of guilt of a defendant pursuant to this section, the judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating and aggravating circumstances pursuant to Section 16-3-20 as otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

 (a) Statutory aggravating circumstances:

 (i) The victim's resistance was overcome by force.

 (ii) The victim was prevented from resisting the act because the actor was armed with a dangerous weapon.

 (iii) The victim was prevented from resisting the act by threats of great and immediate bodily harm, accompanied by an apparent power to inflict bodily harm.

 (iv) The victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing his resistance.

 (v) The crime was committed by a person with a prior conviction for murder.

 (vi) The offender committed the crime for himself or another for the purpose of receiving money or a thing of monetary value.

 (vii) The offender caused or directed another to commit the crime or committed the crime as an agent or employee of another person.

 (viii) The crime was committed against two or more persons by the defendant by one act, or pursuant to one scheme, or course of conduct.

 (ix) The crime was committed during the commission of burglary in any degree, kidnapping, or trafficking in persons.

 (b) Mitigating circumstances:

 (i) The defendant has no significant history of prior criminal convictions involving the use of violence against another person.

 (ii) The crime was committed while the defendant was under the influence of mental or emotional disturbance.

 (iii) The defendant was an accomplice in the crime committed by another person and his participation was relatively minor.

 (iv) The defendant acted under duress or under the domination of another person.

 (v) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

 (vi) The age or mentality of the defendant at the time of the crime.

 (vii) The defendant was below the age of eighteen at the time of the crime.

 The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances, which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases, the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.

 When a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. When a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in this subsection. Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. When a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to life imprisonment. No person sentenced to life imprisonment pursuant to this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for the death penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant upon conviction or adjudication of guilt of a defendant pursuant to this section, the trial judge shall dismiss the jury and shall sentence the defendant to life imprisonment, as provided in this subsection.

 (3) Notwithstanding the provisions of Section 14-7-1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.

 (4) In a criminal action pursuant to this section, which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless those beliefs or attitudes would render him unable to return a verdict according to law.

SECTION 2. 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 3. This act takes effect upon approval by the Governor.

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