CHAPTER 25

Domestic Violence

CROSS REFERENCES

Appointment of guardian ad litem for abuse, neglect, or exploitation proceedings, criminal background checks, see Section 43‑35‑240.

Bail, bond hearing, conditions of release, information to be provided to court, contempt, see Section 22‑5‑510.

Bail, matters to be considered in determining conditions of release, contempt, see Section 17‑15‑30.

LAW REVIEW AND JOURNAL COMMENTARIES

State of fear: Domestic violence in South Carolina. Matthew Robins, 68 S.C. L. Rev. 629 (Spring 2017).

ARTICLE 1

General Provisions

**SECTION 16‑25‑10.** Definitions.

 As used in this article, the term:

 (1) “Deadly weapon” means any pistol, dirk, slingshot, metal knuckles, razor, or other instrument which can be used to inflict deadly force.

 (2) “Great bodily injury” means bodily injury which causes a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

For validity of (3), see Editors’ Notes below.

 (3) “Household member” means:

 (a) a spouse;

 (b) a former spouse;

 (c) persons who have a child in common; or

 (d) a male and female who are cohabiting or formerly have cohabited.

 (4) “Moderate bodily injury” means physical injury that involves prolonged loss of consciousness or that causes temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. Moderate bodily injury does not include one‑time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.

 (5) “Prior conviction of domestic violence” includes conviction of any crime, in any state, containing among its elements those enumerated in, or substantially similar to those enumerated in, Section 16‑25‑20(A) that is committed against a household member as defined in item (3) within the ten years prior to the incident date of the current offense.

 (6) “Protection order” means any order of protection, restraining order, condition of bond, or any other similar order issued in this State or another state or foreign jurisdiction for the purpose of protecting a household member.

 (7) “Firearm” means a pistol, revolver, rifle, shotgun, machine gun, submachine gun, or an assault rifle which is designed to fire or is capable of firing fixed cartridge ammunition or from which a shot or projectile is discharged by an explosive but does not include an antique firearm as defined in 18 U.S.C. 921(a)(16).

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 1, eff January 1, 2006; 2015 Act No. 58 (S.3), Pt II, Section 2, eff June 4, 2015.

Validity

For validity of (3) of this section, see Jane Doe v. State of South Carolina, 2017 WL 5907363, \_ S.C. \_, \_ S.E.2d \_ (2017).

Effect of Amendment

2015 Act No. 58, Section 2, rewrote the section, adding (1), (2), (4), (5), (6), and (7); and in (3), changed the paragraph designators from numbers to letters.

Cross References

Termination of parental rights of parent of child conceived as a result of criminal sexual conduct, see Section 63‑7‑2570.

RESEARCH REFERENCES

Encyclopedias

28 Am. Jur. Proof of Facts 3d 1, Proof of Equal Protection Violation by Municipal Police Department in Failing to Protect Victims of Domestic Violence.

S.C. Jur. Clerks of Court Section 13, Duties.

S.C. Jur. Criminal Domestic Violence Section 1, Scope Note.

S.C. Jur. Criminal Domestic Violence Section 2, Definitions.

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

Attorney General’s Opinions

Discussion of whether or not 2 brothers fighting in the home is criminal domestic violence or Assault. SC Op.Atty.Gen. (Oct. 15, 2002) 2002 WL 31728846.

NOTES OF DECISIONS

In general 1

Validity 1⁄2

1⁄2. Validity

Definitions of “household member” in Domestic Violence Reform Act and Protection from Domestic Abuse Act did not overtly discriminate based on sexual orientation, and therefore statutes were facially valid and constitutional challenge was to definitions as‑applied to alleged victim of assault by same‑sex ex‑fiancé; victim merely sought to be included with those eligible to receive order of protection, and statutes were valid as to same‑sex married couples, opposite‑sex married couples, and unmarried opposite‑sex couples who lived together or had lived together. Doe v. State (S.C. 2017) 2017 WL 5907363. Protection of Endangered Persons 31; Protection of Endangered Persons 36

Defining “household member” in the Domestic Violence Reform Act and the Protection from Domestic Abuse Act to include “a male and female who are cohabiting or formerly have cohabited,” yet exclude a male and male and a female and female who are cohabiting or formerly have cohabited, violates the equal protection clauses of the federal and state constitutions as applied to unmarried same‑sex couples who lived together or had lived together. Doe v. State (S.C. 2017) 2017 WL 5907363. Constitutional Law 3441; Protection of Endangered Persons 31; Protection of Endangered Persons 36

Supreme Court would not amend or sever provisions of Domestic Violence Reform Act and Protection from Domestic Abuse Act that violated equal protection by precluding alleged victim of assault from obtaining order of protection against same‑sex ex‑fiancé; even though Acts had severability clauses, Court lacked authority to effectively amend plain language of Acts, definitions were not facially invalid, and severance would have eliminated protections for opposite‑sex couples who had cohabitated and would not have granted protections to victim. Doe v. State (S.C. 2017) 2017 WL 5907363. Statutes 1535(27)

Domestic Violence Reform Act and Protection from Criminal Domestic Violence Act, which excluded unmarried, cohabiting or formerly cohabiting, same‑sex couples from protection of domestic violence statutes, violated Equal Protection Clause; there was no reasonable basis for providing protection to unmarried, cohabiting or formerly cohabiting, opposite‑sex couples, while denying it to similarly situated same‑sex couples. (Per Pleicones, Acting Justice, with one justice concurring and one justice concurring separately). Doe v. State (S.C. 2017) 2017 WL 3165132. Constitutional Law 3441; Protection of Endangered Persons 31; Protection of Endangered Persons 45

Unconstitutional definition in Domestic Violence Reform Act and Protection from Criminal Domestic Violence Act, which excluded unmarried, cohabiting or formerly cohabiting, same‑sex couples from protection of domestic violence statutes, was severable from remainder of Acts, and thus remainder of Acts remained in effect; all provisions of Acts, save discriminatory definitions, were capable of being executed in accordance with legislative intent, it could be presumed that General Assembly would have passed each Act absent offending provision, and Acts contained severability clauses. (Per Pleicones, Acting Justice, with one justice concurring and one justice concurring separately). Doe v. State (S.C. 2017) 2017 WL 3165132. Statutes 1535(27)

1. In general

Petition for original jurisdiction, which sought declaration that definitions of “household member” in Domestic Violence Reform Act and Protection from Domestic Abuse Act were unconstitutional, raised controversy over which Supreme Court could exercise original jurisdiction; even though parties agreed that alleged victim of assault by same‑sex ex‑fiancé should have been protected under Acts, legitimate constitutional issue was raised, and parties disagreed as to whether definition was constitutional and the appropriate remedy. Doe v. State (S.C. 2017) 2017 WL 5907363. Courts 209(1)

Defendant’s adult step‑daughter, who was allegedly assaulted by defendant at a family barbecue, was within the statutorily defined class designed to be protected under criminal domestic violence statute, even though she was not physically a part of defendant’s household, where statute expressly defined “household member” to include “persons related by consanguinity or affinity within the second degree,” and said clause did not contain a cohabiting requirement. State v. Leopard (S.C.App. 2002) 349 S.C. 467, 563 S.E.2d 342. Assault And Battery 48

Fact that a cohabiting requirement was included in one phrase within the statutory definition of “household” which listed the classes of people protected under criminal domestic violence statute, but requirement was not included in the other phrase, implied that it should not be read into the other. State v. Leopard (S.C.App. 2002) 349 S.C. 467, 563 S.E.2d 342. Assault And Battery 48

Criminal Domestic Violence Act did not impose duty on sheriff’s department to protect domestic violence victim from her husband, even though earlier, on same day that husband shot and killed victim, officers responded to two calls where victim’s nephew, brother, and sister‑in‑law were designated as husband’s victims; while victim’s brother and arguably his wife were related within second degree to husband, there was no evidence of breach of duty under Act by department towards them, much less breach directed toward victim, and to extent victim was identifiable as true object of husband’s hostility, there was no duty breached, as husband was not present at scene when officers arrived, department searched for him without success, and deputy advised victim to leave and go to shelter. Arthurs ex rel. Estate of Munn v. Aiken County (S.C. 2001) 346 S.C. 97, 551 S.E.2d 579. Public Employment 916; Sheriffs And Constables 99

**SECTION 16‑25‑20.** Acts prohibited; penalties.

 (A) It is unlawful to:

 (1) cause physical harm or injury to a person’s own household member; or

 (2) offer or attempt to cause physical harm or injury to a person’s own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

 (B) Except as otherwise provided in this section, a person commits the offense of domestic violence in the first degree if the person violates the provisions of subsection (A) and:

 (1) great bodily injury to the person’s own household member results or the act is accomplished by means likely to result in great bodily injury to the person’s own household member;

 (2) the person violates a protection order and in the process of violating the order commits domestic violence in the second degree;

 (3) has two or more prior convictions of domestic violence within ten years of the current offense;

 (4) the person uses a firearm in any manner while violating the provisions of subsection (A); or

 (5) in the process of committing domestic violence in the second degree one of the following also results:

 (a) the offense is committed in the presence of, or while being perceived by a minor;

 (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;

 (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;

 (d) the offense is committed by impeding the victim’s breathing or air flow; or

 (e) the offense is committed using physical force or the threatened use of force against another to block that person’s access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:

 (i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

 (ii) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

 A person who violates this subsection is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.

 Domestic violence in the first degree is a lesser included offense of domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65.

 (C) A person commits the offense of domestic violence in the second degree if the person violates subsection (A) and:

 (1) moderate bodily injury to the person’s own household member results or the act is accomplished by means likely to result in moderate bodily injury to the person’s own household member;

 (2) the person violates a protection order and in the process of violating the order commits domestic violence in the third degree;

 (3) the person has one prior conviction for domestic violence in the past ten years from the current offense; or

 (4) in the process of committing domestic violence in the third degree one of the following also results:

 (a) the offense is committed in the presence of, or while being perceived by, a minor;

 (b) the offense is committed against a person known, or who reasonably should have been known, by the offender to be pregnant;

 (c) the offense is committed during the commission of a robbery, burglary, kidnapping, or theft;

 (d) the offense is committed by impeding the victim’s breathing or air flow; or

 (e) the offense is committed using physical force or the threatened use of force against another to block that person’s access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:

 (i) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

 (ii) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

 A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than two thousand five hundred dollars nor more than five thousand dollars or imprisoned for not more than three years, or both.

 Domestic violence in the second degree is a lesser‑included offense of domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65.

 Assault and battery in the second degree pursuant to Section 16‑3‑600(D) is a lesser‑included offense of domestic violence in the second degree as defined in this subsection.

 (D) A person commits the offense of domestic violence in the third degree if the person violates subsection (A).

 (1) A person who violates this subsection is guilty of a misdemeanor and, upon conviction, must be fined not less than one thousand dollars nor more than two thousand five hundred dollars or imprisoned not more than ninety days, or both. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, and 22‑3‑550, an offense pursuant to the provisions of this subsection may be tried in summary court.

 (2) Domestic violence in the third degree is a lesser‑included offense of domestic violence in the second degree, as defined in subsection (C), domestic violence in the first degree, as defined in subsection (B), and domestic violence of a high and aggravated nature, as defined in Section 16‑25‑65.

 (3) Assault and battery in the third degree pursuant to Section 16‑3‑600(E) is a lesser‑included offense of domestic violence in the third degree as defined in this subsection.

 (4) A person who violates this subsection is eligible for pretrial intervention pursuant to Chapter 22, Title 17.

 (E) When a person is convicted of a violation of Section 16‑25‑20(B) or (C) or Section 16‑25‑65, the circuit court may suspend execution of all or part of the sentence and place the offender on probation, or if a person is convicted of a violation of Section 16‑25‑20(D), the court may suspend execution of all or part of the sentence, conditioned upon:

 (1) the offender’s mandatory completion, to the satisfaction of the court, of a domestic violence intervention program designed to treat batterers in accordance with the provisions of subsection (G);

 (2) fulfillment of all the obligations arising under court order pursuant to this section and Section 16‑25‑65;

 (3) other reasonable terms and conditions of probation as the court may determine necessary to ensure the protection of the victim; and

 (4) making restitution as the court deems appropriate.

 (F) In determining whether or not to suspend the imposition or execution of all or part of a sentence as provided in this section, the court must consider the nature and severity of the offense, the number of times the offender has repeated the offense, and the best interests and safety of the victim.

 (G) An offender who participates in a domestic violence intervention program pursuant to this section, shall participate in a program offered through a government agency, nonprofit organization, or private provider selected and approved by the Circuit Solicitor with jurisdiction over the offense or the Attorney General if the offense is prosecuted by the Attorney General’s Office. If the offender moves to a different circuit after entering a treatment program selected by the Circuit Solicitor, the Circuit Solicitor for the county in which the offender resides shall have the authority to select and approve the batterer’s treatment program. The offender shall pay a reasonable fee, if required, for participation in the program but no person may be denied participation due to inability to pay. If the offender suffers from a substance abuse problem or mental health concern, the judge may order, or the program may refer, the offender to supplemental treatment coordinated through the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to Section 61‑12‑20 or the Department of Mental Health or Veterans’ Hospital, respectively. The offender must pay a reasonable fee for participation in the substance abuse treatment or mental health program, if required, but no person may be denied participation due to inability to pay.

 (H) A person who violates the terms and conditions of an order of protection issued in this State pursuant to Chapter 4, Title 20, the “Protection from Domestic Abuse Act”, or a valid protection order related to domestic or family violence issued by a court of another state, tribe, or territory is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days and fined not more than five hundred dollars.

 (I) Unless the complaint is voluntarily dismissed or the charge is dropped prior to the scheduled trial date, a person charged with a violation provided in this chapter must appear before a judge for disposition of the case or be tried in the person’s absence.

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 2, eff January 1, 2006; 2008 Act No. 255, Section 1, eff June 4, 2008; 2015 Act No. 58 (S.3), Pt II, Section 4, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 4, rewrote (B), deleted former (C), redesignated former (D) through (H) as (C) through (G), and added (H) and (I).

CROSS REFERENCES

Compensation of victims of crime, victim defined, see Section 16‑3‑1110.

Domestic violence, firearms and ammunition prohibitions, penalties, see Section 16‑25‑30.

Permanent restraining orders, criminal offence defined, see Section 16‑3‑1900.

Restrictions on foster care or adoption placements, see Section 63‑7‑2350.

Violent crimes defined, see Section 16‑1‑60.

Library References

Assault and Battery 47, 100.

Westlaw Topic No. 37.

C.J.S. Assault Sections 1 to 3, 73, 78 to 85, 98.

C.J.S. Robbery Section 108.

RESEARCH REFERENCES

ALR Library

50 ALR, Federal 2nd Series 31 , Validity, Construction, and Application of 18 U.S.C.A. Section 922(G)(9), Prohibiting Possession of Firearm by Persons Convicted of Misdemeanor Crime of Domestic Violence.

Encyclopedias

28 Am. Jur. Proof of Facts 3d 1, Proof of Equal Protection Violation by Municipal Police Department in Failing to Protect Victims of Domestic Violence.

S.C. Jur. Assault and Battery Section 25, Right to Jury Charge on Lesser Included Offense.

S.C. Jur. Criminal Domestic Violence Section 2, Definitions.

S.C. Jur. Criminal Domestic Violence Section 18, Types of Relief Available.

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

S.C. Jur. Magistrates and Municipal Judges Section 32.1, Prosecution of Misdemeanor Cases.

LAW REVIEW AND JOURNAL COMMENTARIES

Testimony regarding battered woman’s syndrome admissible. 39 S.C. L. Rev. 89 (Autumn 1987).

United States Supreme Court Annotations

Weapons, Prior conviction for misdemeanor crime of domestic violence, based on offensive touching, can support federal gun possession disqualification, see U.S. v. Castleman, 2014, 134 S.Ct. 1405, 188 L.Ed.2d 426. Weapons 180(3)

Attorney General’s Opinions

The prosecution of first and second offense criminal domestic violence cases. SC Op.Atty.Gen. (April 18, 2006) 2006 WL 1207285.

A uniform traffic ticket may be used for an arrest of a first offense criminal domestic violence violation if the offense is committed in the presence of a law enforcement officer. SC Op.Atty.Gen. (Jan. 4, 2006) 2006 WL 148717.

A defendant may be prosecuted for second offense criminal domestic violence in magistrate’s court and simultaneously charged with a violation of an order of protection in family court with reference to the same incident. SC Op.Atty.Gen. (August 31, 2005) 2005 WL 2250206.

A Uniform Traffic Ticket may be used to charge an alleged perpetrator of criminal domestic violence even if the investigating law enforcement officer arrives on the scene after the offense has been committed. SC Op.Atty.Gen. (Nov. 13, 2003) 2003 WL 22862788.

Criminal process may be served on Sunday where there is violation of provision of order of protection which enjoins respondent from abusing, threatening to abuse, or molesting petitioner. Whether service of criminal process on Sunday is authorized for violations of any other provision of such order is questionable. 1984 Op.Atty.Gen., No 84‑122, p 276 (1984 WL 159928).

NOTES OF DECISIONS

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1. In general

Violation of a domestic violence protection order is a crime sufficient to support a conviction of first‑degree burglary. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 3

Criminal Domestic Violence Act and statute requiring law enforcement agency to protect victims and witnesses at courthouse did not impose special duty on county and sheriff’s department to protect domestic violence victim from ex‑boyfriend at bond revocation hearing; a statute provided that no provision of article on victim and witness protection created cause of action against a public employee or agency. Edwards v. Lexington County Sheriff’s Dept. (S.C. 2010) 386 S.C. 285, 688 S.E.2d 125, on remand 2011 WL 9521618. Counties 148; Public Employment 916; Sheriffs And Constables 99

The Criminal Domestic Violence Act, the purpose of which was to protect against harm and violence from members of an individual’s household and which provided that a law enforcement officer “may arrest” a person if officer had probable cause to believe person was violating Act, did not impose duty on sheriff’s department to protect domestic violence victim from her husband, absent showing that sheriff’s department knew or had reason to know the likelihood of harm to victim. Arthurs v. Aiken County (S.C.App. 1999) 338 S.C. 253, 525 S.E.2d 542, rehearing denied, certiorari granted, affirmed as modified 346 S.C. 97, 551 S.E.2d 579. Public Employment 916; Sheriffs And Constables 99

Deputy sheriff’s advice to domestic violence victim that she should call police if she saw her estranged husband and that she should avoid letting him in the house did not create a special duty on part of sheriff’s department to protect victim from her husband, in action brought by personal representative of victim’s estate against sheriff’s department for negligence after victim was shot and killed by husband. Arthurs v. Aiken County (S.C.App. 1999) 338 S.C. 253, 525 S.E.2d 542, rehearing denied, certiorari granted, affirmed as modified 346 S.C. 97, 551 S.E.2d 579. Public Employment 972; Sheriffs And Constables 99

Alleged attempt by sheriff’s department to make domestic violence victim a part of its plan to capture victim’s husband by using victim as “bait” did not create special duty by special circumstance that required department to protect victim from husband, in action brought by personal representative of victim’s estate against department for negligence after victim was shot and killed by husband, where sheriff’s deputy did not convey to victim that he wanted to use her as “bait” in attempt to capture her husband and specifically instructed victim to stay behind a locked door and dial 911 if her husband came back and started bothering her. Arthurs v. Aiken County (S.C.App. 1999) 338 S.C. 253, 525 S.E.2d 542, rehearing denied, certiorari granted, affirmed as modified 346 S.C. 97, 551 S.E.2d 579. Public Employment 972; Sheriffs And Constables 99

2. Order of protection

Violating the terms and conditions of a domestic violence order of protection is a crime. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Protection of Endangered Persons 92

For the purposes of the criminal domestic violence statute, an “order of protection” is one that is issued to protect the petitioner or minor household members from the abuse of another household member where the respondent has received notice of the proceedings and has had an opportunity to be heard. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Protection of Endangered Persons 73

3. Intent

Neither statute defining offense of first‑degree burglary nor statute governing domestic violence protection orders contains limitation or exception for unlawful entries or violations committed with benevolent intent; neither statute purports to exclude a misdemeanor violation of a protective order from supporting a conviction of first‑degree burglary, neither statute requires a particular mental state for the violation of a protective order to become a criminal act, and neither statute establishes any exceptions or identifies violations that are not of a criminal nature. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 14; Protection of Endangered Persons 93; Protection of Endangered Persons 101

4. Collateral consequences

A reckless domestic assault qualifies as a “misdemeanor crime of domestic violence” under statute prohibiting possession of a firearm by person convicted of a misdemeanor crime of domestic violence; abrogating United States v. Nobriga, 474 F.3d 561. Voisine v. U.S., 2016, 136 S.Ct. 2272, 195 L.Ed.2d 736. Weapons 180(3)

Defendant’s conviction under Tennessee law for having intentionally or knowingly caused bodily injury to the mother of his child qualified as a “misdemeanor crime of domestic violence,” under federal statute forbidding the possession of firearms by anyone convicted of such a crime. U.S. v. Castleman, 2014, 134 S.Ct. 1405, 188 L.Ed.2d 426. Weapons 180(3)

Defendant’s prior South Carolina statutory offense of criminal domestic violence of high and aggravated nature (CDVHAN) did not set forth elements in the alternative describing several different crimes, and thus, modified categorical approach was not applicable when determining whether the offense was crime of violence for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm; rather, statute was indivisible, as it presented two elements in the conjunctive, i.e., statutory criminal domestic violence (CDV) and common‑law assault and battery of high and aggravated nature (ABHAN). U.S. v. Chisolm (C.A.4 (S.C.) 2014) 579 Fed.Appx. 187, 2014 WL 3720005. Sentencing and Punishment 793

Categorical approach was applicable, when determining whether statutory criminal domestic violence (CDV), as element of South Carolina’s statutory offense of criminal domestic violence of high and aggravated nature (CDVHAN), was crime of violence for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm, though on face of statute, CDV was sub‑divided into two parts, one penalizing causation of physical harm and the other penalizing the offer or attempt to cause physical harm with apparent present ability under circumstances reasonably creating fear of imminent peril; rather than effectively creating several different crimes, these two parts of CDV penalized different levels of completion of same crime, i.e., the offer, attempt, or actual causation of physical harm. U.S. v. Chisolm (C.A.4 (S.C.) 2014) 579 Fed.Appx. 187, 2014 WL 3720005. Sentencing and Punishment 793

Statutory criminal domestic violence (CDV), as element of South Carolina’s statutory offense of criminal domestic violence of high and aggravated nature (CDVHAN), was categorically a crime of violence for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm; an offer to cause physical harm or injury to a household member under the CDV statute coincided with federal definition of crime of violence as threatened use of physical force against the person of another. U.S. v. Chisolm (C.A.4 (S.C.) 2014) 579 Fed.Appx. 187, 2014 WL 3720005. Sentencing and Punishment 793

Defendant’s prior South Carolina statutory offense of criminal domestic violence of high and aggravated nature (CDVHAN) was categorically a crime of violence for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm. U.S. v. Chisolm (C.A.4 (S.C.) 2014) 2014 WL 3720005. Sentencing and Punishment 793

5. Lesser included offenses

Simple assault is a lesser included offense of criminal domestic violence; every element of simple assault is included in the offense of criminal domestic violence. State v. LaCoste (S.C.App. 2001) 347 S.C. 153, 553 S.E.2d 464, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 353 S.C. 538, 579 S.E.2d 318. Indictment And Information 191(.5)

6. Indictment

Pre‑trial amendment of indictment charging defendant with “criminal domestic violence ‑ aggravated,” which amendment added phrase that act of violence was of a high and aggravated nature, was permissible; body and caption of original indictment, when examined with practical eye in view of all surrounding circumstances, provided adequate notice to defendant that he faced charge of criminal domestic violence of a high and aggravated nature (CDVHAN), in that law proscribed only two forms of criminal domestic violence, i.e., non‑aggravated and CDVHAN, caption of original indictment stated offense was “aggravated,” indicating CDVHAN, indictment was sufficient to apprise defendant of elements of offense, trial court knew what judgment to pronounce in event of conviction, and defendant was ensured double jeopardy protections. State v. Means (S.C. 2006) 367 S.C. 374, 626 S.E.2d 348. Indictment And Information 159(2)

7. Questions for jury

Evidence was sufficient to support submission of criminal domestic violence charge to the jury, in prosecution for resisting arrest, disorderly conduct, and assault; witness testified that she saw defendant repeatedly strike a woman who identified herself as his wife and who reported to witness that she was afraid of defendant. State v. LaCoste (S.C.App. 2001) 347 S.C. 153, 553 S.E.2d 464, rehearing denied, certiorari granted, certiorari dismissed as improvidently granted 353 S.C. 538, 579 S.E.2d 318. Assault And Battery 95

8. Sufficiency of evidence

Direct and circumstantial evidence of defendant’s intent to commit a crime once inside victim’s residence, independent of defendant’s violation of domestic violence protection order by breaking into victim’s home, was sufficient to support conviction of first‑degree burglary; defendant admitted that went to victim’s home with intent of talking to victim, he knew protective order barred any communication or attempt to communicate with victim in any way, and he entered victim’s home and talked to her for hours. State v. Gilliland (S.C.App. 2012) 402 S.C. 389, 741 S.E.2d 521, rehearing denied. Burglary 41(3)

9. Sentence and punishment

The circuit court must make specific findings in ruling on parole eligibility or ineligibility with respect to a defendant’s claim that there was a history of domestic violence at the hands of her victim. State v. Blackwell‑Selim (S.C. 2011) 392 S.C. 1, 707 S.E.2d 426. Pardon and Parole 54

Use of the term “credible evidence,” with respect to evidence of domestic violence committed against the defendant by a household member, as required for the defendant to be eligible for early parole after serving one‑fourth of a prison term for a crime against the household member, indicates that the legislature intended the defendant’s evidence to be, in fact, trustworthy, not simply plausible. State v. Blackwell‑Selim (S.C. 2011) 392 S.C. 1, 707 S.E.2d 426. Pardon and Parole 58

A history of domestic violence committed against the defendant by a household member, as required for the defendant to be eligible for early parole after serving one‑fourth of a prison term for a crime against the household member, must be proven by a preponderance of the evidence. State v. Blackwell‑Selim (S.C. 2011) 392 S.C. 1, 707 S.E.2d 426. Pardon and Parole 58

Trial court was required to make specific findings of fact on record as to whether defendant, convicted of voluntary manslaughter of her live‑in boyfriend, suffered domestic violence at hands of boyfriend, in considering whether defendant was eligible for early parole after serving one‑fourth of 20‑year prison sentence. State v. Blackwell‑Selim (S.C. 2011) 392 S.C. 1, 707 S.E.2d 426. Pardon and Parole 54

Defendant’s South Carolina conviction for first‑degree domestic violence categorically qualified as “crime of violence,” and thus conviction was a Grade A supervised release violation for purpose of defendant’s revocation sentence; offense of domestic violence had as an element the use, attempted use, or threatened use of physical force against the person of another, which was not satisfied by only minimal touching. United States v. Young (C.A.4 (S.C.) 2017) 702 Fed.Appx. 113, 2017 WL 2963487. Sentencing and Punishment 2038

District court committed procedural error in failing to adequately explain its reasoning for imposing 24‑month revocation sentence for defendant who violated terms of his supervised release as result of South Carolina conviction for first‑degree domestic violence and two failed drug tests; district court merely identified the statutory maximum sentence and imposed it, without mentioning sentencing statute, any of its sentencing factors, or any of defendant’s arguments for a lower sentence, additionally, district court did not ask defendant any questions that would shed light on its reasoning. United States v. Young (C.A.4 (S.C.) 2017) 702 Fed.Appx. 113, 2017 WL 2963487. Sentencing and Punishment 2030

10. Review

Record before Court of Appeals lacked facts necessary for determination that admission of victim’s statements violated confrontation clause, in criminal domestic violence case, where recording of proceeding before magistrate’s court was unavailable, and the only facts available to the Court of Appeals were from magistrate’s summary of responding officer’s testimony during State’s case‑in‑chief; such information was insufficient especially where the magistrate did not hold a hearing to determine whether officer’s testimony would violate the confrontation clause. State v. Haygood (S.C. 2015) 413 S.C. 239, 776 S.E.2d 262. Criminal Law 1119(2)

Sentencing statute governing criminal domestic violence, third or subsequent offense (CDV 3rd), required inmates convicted of CDV 3rd to actually be imprisoned for the mandatory one‑year minimum, and thus, defendant was not eligible for good time and earned work credits against his sentence; unlike provision governing CDV second offense, provision governing CDV 3rd offenses did not include language providing for early release based on credits earned during service of sentence. Nelson v. Ozmint (S.C. 2010) 390 S.C. 432, 702 S.E.2d 369. Prisons 245(3)

Otherwise moot question as to whether defendant should have been granted good time and earned work credits against his sentence for conviction by guilty plea to criminal domestic violence, third or subsequent offense (CDV 3rd), qualified for review as one capable of repetition yet evading review; although defendant had completed his sentence, other inmates affected by interpretation of sentencing statute governing CDV 3rd offenses would, like defendant, serve the one year mandatory term before the lawfulness of the interpretation could be reviewed. Nelson v. Ozmint (S.C. 2010) 390 S.C. 432, 702 S.E.2d 369. Declaratory Judgment 392.1

Court of Appeals erred in concluding that trial court lacked subject matter jurisdiction in prosecution of defendant for criminal domestic violence of a high and aggravated nature (CDVHAN) on basis of alleged improperly amended indictment, as an indictment which allegedly has been improperly amended did not raise question of subject matter jurisdiction, but instead raised question of whether defendant properly received notice he would be tried for a particular crime. State v. Means (S.C. 2006) 367 S.C. 374, 626 S.E.2d 348. Criminal Law 99; Indictment And Information 159(2)

Defendant’s assertion that evidence failed to support either municipal court’s conclusion of his guilt or circuit court’s affirmance of his conviction for criminal domestic violence (CDV) could not be reviewed by Court of Appeals, who sat to review errors of law only in criminal appeals. Rogers v. State (S.C.App. 2004) 358 S.C. 266, 594 S.E.2d 278. Criminal Law 1134.27; Criminal Law 1134.49(7)

**SECTION 16‑25‑30.** Firearms and ammunition prohibitions; penalties.

 (A) Notwithstanding the provisions of Section 16‑23‑30, it is unlawful for a person to ship, transport, receive, or possess a firearm or ammunition, if the person:

 (1) has been convicted of a violation of Section 16‑25‑20(B) or 16‑25‑65, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(B) or Section 16‑25‑65;

 (2) has been convicted of a violation of Section 16‑25‑20(C) and the court made specific findings and concluded that the person caused moderate bodily injury to their own household member, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(C) and the court made specific findings and concluded that the person caused moderate bodily injury to their own household member;

 (3) has been convicted of a violation of Section 16‑25‑20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition;

 (4) is subject to a valid order of protection issued by the family court pursuant to Chapter 4, Title 20, and the family court judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the family court judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition. The standard applied in this subsection applies only to the determination of whether to prohibit a person from possessing a firearm or ammunition and does not apply to the issuance of the order pursuant to Chapter 4, Title 20; or

 (5) is subject to a valid order of protection related to domestic or family violence issued by a court of another state, tribe, or territory in compliance with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, and the judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition. The standard applied in this subsection applies only to the determination of whether to prohibit a person from possessing a firearm or ammunition and does not apply to the issuance of the order pursuant to Chapter 4, Title 20.

 (B) A person who violates subsection (A)(1) is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned for not more than five years, or both. A person who violates subsection (A)(2) or (A)(3) is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than three years, or both. A person who violates subsection (A)(4) or (A)(5) is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days, or both.

 (C) A person must not be considered to have been convicted of domestic violence for purposes of this section unless the person was represented by counsel in the case, or knowingly and intelligently waived the right to counsel in the case; and in the case of a prosecution for an offense described in this section for which a person was entitled to a jury trial in the jurisdiction in which the case was tried, either the case was tried by a jury, or the person knowingly and intelligently waived the right to have the case tried by a jury, by guilty plea or otherwise. A person must not be considered to have been convicted of domestic violence for purposes of this section if the conviction has been expunged, set aside, or is an offense for which the person has been pardoned.

 (D) At the time a person is convicted of violating the provisions of Section 16‑25‑20 or 16‑25‑65, or upon the issuance of an order of protection pursuant to Chapter 4, Title 20, the court must deliver to the person a written form that conspicuously bears the following language: “Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16‑25‑20 or 16‑25‑65, or a person who is subject to a valid order of protection pursuant to Chapter 4, Title 20, to ship, transport, possess, or receive a firearm or ammunition.”

 (E) The provisions of this section prohibiting the possession of firearms and ammunition by persons who have been convicted of domestic violence shall apply to a person who has been convicted of domestic violence for:

 (1) life, if the person has been convicted of a violation of Section 16‑25‑65, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑65;

 (2) ten years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later, if the person has been convicted of a violation of Section 16‑25‑20(B), or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(B);

 (3) three years from the date of conviction or the date the person is released from confinement for the conviction, whichever is later, if the person has been convicted of a violation of Section 16‑25‑20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or has been convicted of domestic violence in another state, tribe, or territory containing among its elements those elements enumerated in Section 16‑25‑20(C) or (D) and the judge at the time of sentencing ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition; or

 (4) the duration of the order of protection, if the person is subject to a valid order of protection issued by the family court pursuant to Chapter 4, Title 20, and the family court judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the family court judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition, or is subject to a valid order of protection related to domestic or family violence issued by a court of another state, tribe, or territory in compliance with the Uniform Interstate Enforcement of Domestic Violence Protection Orders Act and the judge at the time of the hearing made specific findings of physical harm, bodily injury, assault, or that the person offered or attempted to cause physical harm or injury to a person’s own household member with apparent and present ability under the circumstances reasonably creating fear of imminent peril and the judge ordered that the person is prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition.

 (F)(1) Following the period of time established in subsection (E), if the person has not been convicted of any other domestic violence offenses pursuant to this article or similar offenses in another jurisdiction, no domestic violence charges are currently pending against the person, and the person is not otherwise prohibited from shipping, transporting, receiving, or possessing a firearm or ammunition pursuant to any other State law, the person’s right to ship, transport, receive, or possess a firearm or ammunition shall be restored.

 (2) Following the period of time established in subsection (E), if the person requests in writing to the South Carolina Law Enforcement Division (SLED), SLED shall notify the National Instant Criminal Background Check System (NICS) that the State has restored the person’s right to ship, transport, receive, or possess a firearm or ammunition, and shall request immediate removal of the person’s name to whom the restrictions contained in this section apply.

HISTORY: 2009 Act No. 59, Section 6, eff June 2, 2009; 2015 Act No. 58 (S.3), Pt II, Section 9, eff June 4, 2015.

Editor’s Note

Former Section 16‑25‑30, entitled “Penalties”, was derived from 1984 Act No. 484, Section 1, 1994 Act No. 519, Section 1, and omitted effective January 1, 2004, by 2003 Act No. 92.

Effect of Amendment

2015 Act No. 58, Section 9, rewrote the section.

CROSS REFERENCES

Emergency restraining orders, procedure, see Section 16‑3‑1920.

Permanent restraining orders, criminal offence defined, see Section 16‑3‑1900.

Permanent restraining orders, procedure, see Section 16‑3‑1910.

Library References

Weapons 180(3).

Westlaw Topic No. 406.

RESEARCH REFERENCES

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S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

United States Supreme Court Annotations

Weapons offenses, possession of firearm by convicted felons, misdemeanor crime of domestic violence, domestic relationship as element of predicate offense, see U.S. v. Hayes, 2009, 129 S.Ct. 1079, 555 U.S. 415, 172 L.Ed.2d 816, on remand 337 Fed.Appx. 285, 2009 WL 1705685.

NOTES OF DECISIONS

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1. Collateral consequences

Defendant’s conviction under Tennessee law for having intentionally or knowingly caused bodily injury to the mother of his child qualified as a “misdemeanor crime of domestic violence,” under federal statute forbidding the possession of firearms by anyone convicted of such a crime. U.S. v. Castleman, 2014, 134 S.Ct. 1405, 188 L.Ed.2d 426. Weapons 180(3)

**SECTION 16‑25‑65.** Domestic violence of a high and aggravated nature; elements; penalty; statutory offense.

 (A) A person who violates Section 16‑25‑20(A) is guilty of the offense of domestic violence of a high and aggravated nature when one of the following occurs. The person:

 (1) commits the offense under circumstances manifesting extreme indifference to the value of human life and great bodily injury to the victim results;

 (2) commits the offense, with or without an accompanying battery and under circumstances manifesting extreme indifference to the value of human life, and would reasonably cause a person to fear imminent great bodily injury or death; or

 (3) violates a protection order and, in the process of violating the order, commits domestic violence in the first degree.

 (B) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years.

 (C) The provisions of subsection (A) create a statutory offense of domestic violence of a high and aggravated nature and must not be construed to codify the common law crime of assault and battery of a high and aggravated nature.

 (D) Circumstances manifesting extreme indifference to the value of human life include, but are not limited to, the following:

 (1) using a deadly weapon;

 (2) knowingly and intentionally impeding the normal breathing or circulation of the blood of a household member by applying pressure to the throat or neck or by obstructing the nose or mouth of a household member and thereby causing stupor or loss of consciousness for any period of time;

 (3) committing the offense in the presence of a minor;

 (4) committing the offense against a person he knew, or should have known, to be pregnant;

 (5) committing the offense during the commission of a robbery, burglary, kidnapping, or theft; or

 (6) using physical force against another to block that person’s access to any cell phone, telephone, or electronic communication device with the purpose of preventing, obstructing, or interfering with:

 (a) the report of any criminal offense, bodily injury, or property damage to a law enforcement agency; or

 (b) a request for an ambulance or emergency medical assistance to any law enforcement agency or emergency medical provider.

HISTORY: 1994 Act No. 516, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 3, eff January 1, 2006; 2015 Act No. 58 (S.3), Pt II, Section 5, eff June 4, 2015.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

Effect of Amendment

2015 Act No. 58, Section 5, rewrote (A) and (B); in (C), deleted “criminal” before “domestic violence”; and added (D).

CROSS REFERENCES

Commission of this crime within specified radius of child day care center as separate offense, see Section 63‑13‑200.

Compensation of victims of crime, victim defined, see Section 16‑3‑1110.

Crime specified in this section defined as violent crime, see Section 16‑1‑60.

Denial of registration as an operator of a child day care or group day care home where the applicant, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑820.

Denial of renewal for child day care or group day care home where the person applying for approval, the operator of the facility, or an employee or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑630.

Domestic violence, acts prohibited, penalties, see Section 16‑25‑20.

Domestic violence, firearms and ammunition prohibitions, penalties, see Section 16‑25‑30.

Fingerprint review of any person applying to operate or seek employment at a child day care or group day care home to determine prior conviction of the crime referred to in this section, see Section 63‑13‑620.

No license or registration will be issued to any religious establishment to operate a child day care or group day care home where the operator, an employee, or caregiver has been convicted of the crime referred to in this section, see Section 63‑13‑1010.

No person may be employed by the Department of Social Services in its day care licensing or child protective services divisions who has been convicted of the crime referred to in this section, see Section 63‑13‑190.

Offenses specified in this section as exempt from classification of felonies and misdemeanors, see Section 16‑1‑10.

Permanent restraining orders, criminal offence defined, see Section 16‑3‑1900.

Restrictions on foster care or adoption placements, see Section 63‑7‑2350.

Library References

Assault and Battery 54, 100.

Westlaw Topic No. 37.

C.J.S. Assault Sections 86 to 88, 95 to 96, 98.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Assault and Battery Section 10, Degrees.

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

NOTES OF DECISIONS

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Validity 1

1. Validity

“Purposeful infliction of shame and disgrace,” which is a circumstance in aggravation that supports a conviction for criminal domestic violence of a high and aggravated nature, does not violate due process on the ground of vagueness; “shame” and “disgrace” are common terms such that a person of common intelligence need not guess at the meanings, and a person of common intelligence understands what “purposeful infliction” means. State v. Sullivan (S.C. 2005) 362 S.C. 373, 608 S.E.2d 422, rehearing denied. Assault And Battery 48; Constitutional Law 4509(4)

The aggravating circumstance of a “difference in the sexes” in the offense of criminal domestic violence of a high and aggravated nature was not an impermissible gender‑based classification under the equal protection clause; the aggravator was legitimately based upon realistic physiological size and strength differences of men and women. State v. Wright (S.C. 2002) 349 S.C. 310, 563 S.E.2d 311. Assault And Battery 54; Constitutional Law 3419

2. In general

“Assault and battery of a high and aggravated nature” (ABHAN), within meaning of statute providing for offense of criminal domestic violence of a high and aggravated nature (CDVHAN), is an unlawful act of violent injury accompanied by a circumstance of aggravation. State v. Sullivan (S.C. 2005) 362 S.C. 373, 608 S.E.2d 422, rehearing denied. Assault And Battery 48

Circumstances of aggravation, as required to sustain a conviction for criminal domestic violence of a high and aggravated nature, include use of a deadly weapon, intent to commit a felony, infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, difference in gender, purposeful infliction of shame and disgrace, taking indecent liberties or familiarities with a female, and resistance to lawful authority. State v. Sullivan (S.C. 2005) 362 S.C. 373, 608 S.E.2d 422, rehearing denied. Assault And Battery 48

Circumstances of aggravation, for purposes of the offense of criminal domestic violence of a high and aggravated nature, include the use of a deadly weapon, the intent to commit a felony, infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, a difference in gender, the purposeful infliction of shame and disgrace, taking indecent liberties or familiarities with a female, and resistance to lawful authority. State v. Wright (S.C. 2002) 349 S.C. 310, 563 S.E.2d 311. Assault And Battery 54

Evidence that, while on probation, defendant was involved in a domestic dispute that resulted in a charge of criminal domestic violence of a high and aggravated nature under state law was sufficient to establish that he violated term of probation by engaging in criminal conduct. U.S. v. West (C.A.4 (S.C.) 2002) 47 Fed.Appx. 252, 2002 WL 31165078, Unreported. Sentencing And Punishment 2004

3. Collateral consequences

Sentencing court’s finding that defendant had prior conviction under South Carolina law, for criminal domestic violence of high and aggravated nature (CDVHAN), was not clearly erroneous, for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm; while state court had failed to check the boxes on sentencing sheet indicating whether defendant was convicted by trial or whether he pled guilty, defendant, his attorney in state case, and prosecution’s attorney in state case all signed sentencing sheet indicating that defendant was being sentenced for CDVHAN charge “[a]s [i]ndicted,” and that plea was by “[r]ecommendation by the State” as opposed to being “Without Negotiations or Recommendation,” or by “Negotiated Sentence.” U.S. v. Chisolm (C.A.4 (S.C.) 2014) 579 Fed.Appx. 187, 2014 WL 3720005. Sentencing and Punishment 982

Defendant’s prior South Carolina statutory offense of criminal domestic violence of high and aggravated nature (CDVHAN) did not set forth elements in the alternative describing several different crimes, and thus, modified categorical approach was not applicable when determining whether the offense was crime of violence for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm; rather, statute was indivisible, as it presented two elements in the conjunctive, i.e., statutory criminal domestic violence (CDV) and common‑law assault and battery of high and aggravated nature (ABHAN). U.S. v. Chisolm (C.A.4 (S.C.) 2014) 579 Fed.Appx. 187, 2014 WL 3720005. Sentencing and Punishment 793

Categorical approach was applicable, when determining whether statutory criminal domestic violence (CDV), as element of South Carolina’s statutory offense of criminal domestic violence of high and aggravated nature (CDVHAN), was crime of violence for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm, though on face of statute, CDV was sub‑divided into two parts, one penalizing causation of physical harm and the other penalizing the offer or attempt to cause physical harm with apparent present ability under circumstances reasonably creating fear of imminent peril; rather than effectively creating several different crimes, these two parts of CDV penalized different levels of completion of same crime, i.e., the offer, attempt, or actual causation of physical harm. U.S. v. Chisolm (C.A.4 (S.C.) 2014) 579 Fed.Appx. 187, 2014 WL 3720005. Sentencing and Punishment 793

Statutory criminal domestic violence (CDV), as element of South Carolina’s statutory offense of criminal domestic violence of high and aggravated nature (CDVHAN), was categorically a crime of violence for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm; an offer to cause physical harm or injury to a household member under the CDV statute coincided with federal definition of crime of violence as threatened use of physical force against the person of another. U.S. v. Chisolm (C.A.4 (S.C.) 2014) 579 Fed.Appx. 187, 2014 WL 3720005. Sentencing and Punishment 793

Defendant’s prior South Carolina statutory offense of criminal domestic violence of high and aggravated nature (CDVHAN) was categorically a crime of violence for purposes of determining base offense level under Sentencing Guidelines, at sentencing for being felon in possession of firearm. U.S. v. Chisolm (C.A.4 (S.C.) 2014) 2014 WL 3720005. Sentencing and Punishment 793

4. Indictment

Pre‑trial amendment of indictment charging defendant with “criminal domestic violence ‑ aggravated,” which amendment added phrase that act of violence was of a high and aggravated nature, was permissible; body and caption of original indictment, when examined with practical eye in view of all surrounding circumstances, provided adequate notice to defendant that he faced charge of criminal domestic violence of a high and aggravated nature (CDVHAN), in that law proscribed only two forms of criminal domestic violence, i.e., non‑aggravated and CDVHAN, caption of original indictment stated offense was “aggravated,” indicating CDVHAN, indictment was sufficient to apprise defendant of elements of offense, trial court knew what judgment to pronounce in event of conviction, and defendant was ensured double jeopardy protections. State v. Means (S.C. 2006) 367 S.C. 374, 626 S.E.2d 348. Indictment And Information 159(2)

Indictment of defendant for aggravated criminal domestic violence was not deficient and conferred jurisdiction on trial court, though it failed to allege victim was a household member, as consideration of all surrounding circumstances demonstrated defendant was not prejudiced; there was no dispute at trial or on appeal that the alleged victim had a child in common with defendant, defendant had received a preliminary hearing, indictment contained standard language that the offense alleged was “against the peace and dignity of the State, and contrary to the statute in such case made and provided,” and caption of the indictment named the offense that defendant was alleged to have committed. State v. McCloud (S.C.App. 2003) 354 S.C. 40, 579 S.E.2d 534. Assault And Battery 78

Indictment for aggravated criminal domestic violence sufficiently notified defendant he was charged with causing serious bodily injury to the victim and specified circumstances of aggravation necessary to establish criminal domestic violence of a high and aggravated nature (CDVHAN), when considered with surrounding circumstances; indictment alleged defendant struck victim in the face with his closed fist, hit her in the head, pulled her hair and scratched her neck, arrest warrant contained affidavit stating victim suffered swelling and bruising to her right eye and had to seek medical attention at hospital, and it was apparent from the indictment that there was a difference in gender between defendant and the victim. State v. McCloud (S.C.App. 2003) 354 S.C. 40, 579 S.E.2d 534. Assault And Battery 78

5. Instructions

Any lack of evidence as to “an assault and battery which involves the use of a deadly weapon” or “an assault which would reasonably cause a person to fear imminent serious bodily injury or death” did not warrant jury instruction on criminal domestic violence (CDV) as lesser included offense of criminal domestic violence of a high and aggravated nature (CDVHAN), where evidence of serious bodily injury required finding that defendant was either not guilty or guilty only of CDVHAN. State v. Golston (S.C.App. 2012) 399 S.C. 393, 732 S.E.2d 175, rehearing denied, certiorari denied. Assault and Battery 96(1)

Evidence in prosecution for criminal domestic violence of a high and aggravated nature (CDVHAN) did not warrant jury instruction on criminal domestic violence (CDV) as lesser included offense, absent any evidence in record that anyone other than defendant was responsible for victim’s injuries, where assuming state proved that defendant committed CDV, defendant was necessarily the person who caused all of victim’s injuries, and no evidence in record permitted conclusion that victim’s injuries were anything other than serious bodily injuries. State v. Golston (S.C.App. 2012) 399 S.C. 393, 732 S.E.2d 175, rehearing denied, certiorari denied. Assault and Battery 96(1)

6. Review

Court of Appeals erred in concluding that trial court lacked subject matter jurisdiction in prosecution of defendant for criminal domestic violence of a high and aggravated nature (CDVHAN) on basis of alleged improperly amended indictment, as an indictment which allegedly has been improperly amended did not raise question of subject matter jurisdiction, but instead raised question of whether defendant properly received notice he would be tried for a particular crime. State v. Means (S.C. 2006) 367 S.C. 374, 626 S.E.2d 348. Criminal Law 99; Indictment And Information 159(2)

**SECTION 16‑25‑70.** Warrantless arrest or search; admissibility of evidence.

 (A) A law enforcement officer may arrest, with or without a warrant, a person at the person’s place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony pursuant to the provisions of Section 16‑25‑20, 16‑25‑65, or 16‑25‑125, even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of probable cause related to a violation pursuant to the provisions of this chapter by telephone or radio communication with the appropriate law enforcement agency. A law enforcement agency must complete an investigation of an alleged violation of this chapter even if the law enforcement agency was not notified at the time the alleged violation occurred. The investigation must be documented on an incident report form which must be maintained by the investigating agency. If an arrest warrant is sought, the law enforcement agency must present the results of the investigation and any other relevant evidence to a magistrate who may issue an arrest warrant if probable cause is established.

 (B) A law enforcement officer may arrest, with or without a warrant, a person at the person’s place of residence or elsewhere if physical manifestations of injury to the alleged victim are present and the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16‑25‑20 or 16‑25‑65 even if the act did not take place in the presence of the officer. A law enforcement officer may not make an arrest if he determines probable cause does not exist after consideration of the factors set forth in subsection (D) and observance that no physical manifestation of injury is present. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement agency.

 (C) In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member.

 (D) If a law enforcement officer receives conflicting complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer must not arrest the other person accused of having committed domestic or family violence. In determining whether a person is the primary aggressor, the officer must consider the following factors and any other factors he considers relevant:

 (1) prior complaints of domestic or family violence;

 (2) the relative severity of the injuries inflicted on each person taking into account injuries alleged which may not be easily visible at the time of the investigation;

 (3) the likelihood of future injury to each person;

 (4) whether one of the persons acted in self‑defense; and

 (5) household member accounts regarding the history of domestic violence.

 (E) A law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage a party’s requests for intervention by law enforcement.

 (F) A law enforcement officer who arrests two or more persons for a crime involving domestic or family violence must include the grounds for arresting both parties in the written incident report, and must include a statement in the report that the officer attempted to determine which party was the primary aggressor pursuant to this section and was unable to make a determination based upon the evidence available at the time of the arrest.

 (G) When two or more household members are charged with a crime involving domestic or family violence arising from the same incident and the court finds that one party was the primary aggressor pursuant to this section, the court, if appropriate, may dismiss charges against the other party or parties.

 (H) Evidence discovered as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in a court of law:

 (1) if it is found:

 (a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or

 (b) pursuant to a search incident to a lawful arrest for a violation of this article or for a violation of Chapter 3, Title 16; or

 (2) if it is evidence of a violation of this article.

 An officer may arrest and file criminal charges against a suspect for any offense that arises from evidence discovered pursuant to this section.

 Unless otherwise provided for in this section, no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law.

 (I) In addition to the protections granted to the law enforcement officer and law enforcement agency under the South Carolina Tort Claims Act, a law enforcement officer is not liable for an act, omission, or exercise of discretion under this section unless the act, omission, or exercise of discretion constitutes gross negligence, recklessness, wilfulness, or wantonness.

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 1995 Act No. 83, Section 61; 1997 Act No. 120, Section 3; 2002 Act No. 329, Section 4, eff June 18, 2002; 2003 Act No. 92, Section 3, eff January 1, 2004; 2008 Act No. 319, Section 3, eff June 11, 2008; 2015 Act No. 58 (S.3), Pt IV, Section 16, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 16, in (A), deleted “(A) or (D)” following “16‑25‑20”, and added the second to last sentence, relating to the incident report; in (B), substituted “may arrest” for “must arrest”, deleted “(A) or (D)” following “16‑25‑20”, and substituted “officer may not make” for “officer is not required to make”.

CROSS REFERENCES

Restrictions on foster care or adoption placements, see Section 63‑7‑2350.

Library References

Arrest 63.4, 65, 68.1, 71.1.

Searches and Seizures 47.

Westlaw Topic Nos. 35, 349.

C.J.S. Aliens Sections 318, 320 to 321.

C.J.S. Arrest Sections 6 to 8, 17 to 36, 48, 62 to 70.

C.J.S. Searches and Seizures Sections 79 to 81, 84 to 93, 95.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

United States Supreme Court Annotations

Search and seizure, warrantless entry, evidence in plain view, exigent circumstances, see Kentucky v. King, 2011, 131 S.Ct. 1849, 563 U.S. 452, 179 L.Ed.2d 865, on remand 386 S.W.3d 119.

Attorney General’s Opinions

The officer retains broad discretion in enforcing this section. SC Op.Atty.Gen. (May 21, 2002) 2002 WL 1340433.

Bringing contraband charges, based on contraband found during a search conducted after an arrest under the Criminal Domestic Violence Act. SC Op.Atty.Gen. (Nov. 14, 2000) 2000 WL 1803595.

An officer may be an affiant upon a warrant for Criminal Domestic Violence which is executed at a later date at another place. SC Op.Atty.Gen. (August 5, 1996) 1996 WL 549522.

No provisions of the South Carolina law authorize an officer to take custody of a child for the sole purpose of enforcing child visitation provisions of a Family Court Order by taking the child from the noncustodial parent and returning it to the custodial parent when the visiting parent has failed to return the child at the appointed hour. Unless an individual has committed a criminal offense, a sheriff may not arrest that individual solely for violation of a Family Court order without some judicial process authorizing that arrest. However, violations of orders issued pursuant to the Protection from Domestic Abuse Act are misdemeanors, and an officer may arrest according to the procedures set forth in section 16‑25‑70 of the Code. 1988 Op.Atty.Gen., No 88‑83, p 236 (1988 WL 383566).

Criminal process may be served on Sunday where there is violation of provision of order of protection which enjoins respondent from abusing, threatening to abuse, or molesting petitioner. Whether service of criminal process on Sunday is authorized for violations of any other provision of such order is questionable. 1984 Op.Atty.Gen., No 84‑122, p 276 (1984 WL 159928).

NOTES OF DECISIONS

In general 1

1. In general

Language of safety belt statute section providing that a vehicle, driver, or occupant in a vehicle must not be searched, nor may consent to search requested by law enforcement officer, solely because of safety belt violation did not limit admission of evidence in same manner as criminal domestic violence (CDV) statute, which expressly forbade admissibility of evidence gained as result of complaint filed under that statute. State v. Odom (S.C.App. 2007) 376 S.C. 330, 656 S.E.2d 748, rehearing denied, certiorari denied. Criminal Law 392.17(2)

Portion of criminal domestic violence (CDV) statute limiting admissibility of evidence resulting from warrantless search of CDV suspect did not apply to crack cocaine found on defendant’s person, where police officers who arrested defendant were not even advised that CDV had occurred until they had already decided to charge defendant with public drunkenness and disorderly conduct, and where he was in fact charged with those crimes. State v. Roberts (S.C.App. 2000) 340 S.C. 238, 530 S.E.2d 899. Criminal Law 392.17(2)

Where police officer responding to domestic violence complaint entered defendant’s mother’s home at her invitation, strictures of Criminal Domestic Violence Act concerning warrantless entries and admissibility of evidence resulting from warrantless searches did not apply; thus, crack cocaine seized from defendant’s person during search incident to his warrantless arrest for criminal domestic violence was admissible in prosecution for possession of crack cocaine with intent to distribute. State v. Cannon (S.C. 1999) 336 S.C. 335, 520 S.E.2d 317. Arrest 71.1(5); Criminal Law 392.42(5)

**SECTION 16‑25‑80.** Effect on enforcement of contempt orders and police arrest powers; construction with assault and battery and other criminal offenses.

 Nothing in this article affects or limits the powers of any court to enforce its own orders by civil or criminal contempt or the powers of the police to make other lawful arrests.

 Nothing in this article may be construed to repeal, replace, or preclude application of any other provisions of law pertaining to assault, assault and battery, assault and battery of a high and aggravated nature, or other criminal offenses.

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004.

Editor’s Note

2010 Act No. 273, Section 7.C, provides:

“Wherever in the 1976 Code of Laws reference is made to the common law offense of assault and battery of a high and aggravated nature, it means assault and battery with intent to kill, as contained in repealed Section 16‑3‑620, and, except for references in Section 16‑1‑60 and Section 17‑25‑45, wherever in the 1976 Code reference is made to assault and battery with intent to kill, it means attempted murder as defined in Section 16‑3‑29.”

CROSS REFERENCES

Restrictions on foster care or adoption placements, see Section 63‑7‑2350.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Clerks of Court Section 13, Duties.

S.C. Jur. Criminal Domestic Violence Section 1, Scope Note.

S.C. Jur. Criminal Domestic Violence Section 2, Definitions.

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

S.C. Jur. Criminal Domestic Violence Section 24, Other Criminal Remedies Available.

NOTES OF DECISIONS

In general 1

1. In general

Criminal Domestic Violence Act and statute requiring law enforcement agency to protect victims and witnesses at courthouse did not impose special duty on county and sheriff’s department to protect domestic violence victim from ex‑boyfriend at bond revocation hearing; a statute provided that no provision of article on victim and witness protection created cause of action against a public employee or agency. Edwards v. Lexington County Sheriff’s Dept. (S.C. 2010) 386 S.C. 285, 688 S.E.2d 125, on remand 2011 WL 9521618. Counties 148; Public Employment 916; Sheriffs And Constables 99

**SECTION 16‑25‑90.** Parole eligibility as affected by evidence of domestic violence suffered at hands of household member.

 Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one‑fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post‑ conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16‑25‑20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17‑27‑45.

HISTORY: 1995 Act No. 7, Part I Section 14; 1998 Act No. 401, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004.

Cross References

Annual review for prisoners eligible for parole who are denied parole, see Section 24‑21‑645.

Library References

Pardon and Parole 50.

Westlaw Topic No. 284.

C.J.S. Pardon and Parole Sections 55 to 56.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

NOTES OF DECISIONS

In general 1

Presumptions and burden of proof 2

1. In general

Trial court had discretion to grant or deny defendant’s motion for early parole eligibility on charge for voluntary manslaughter of his estranged wife, under statute providing for same if there was evidence of history of criminal domestic violence suffered at hands of household member, in view of evidence that defendant wife had tumultuous relationship that included instances of mutual combat. State v. Hawes (S.C. 2015) 411 S.C. 188, 767 S.E.2d 707. Pardon and Parole 54

The circuit court must make specific findings in ruling on parole eligibility or ineligibility with respect to a defendant’s claim that there was a history of domestic violence at the hands of her victim. State v. Blackwell‑Selim (S.C. 2011) 392 S.C. 1, 707 S.E.2d 426. Pardon and Parole 54

Use of the term “credible evidence,” with respect to evidence of domestic violence committed against the defendant by a household member, as required for the defendant to be eligible for early parole after serving one‑fourth of a prison term for a crime against the household member, indicates that the legislature intended the defendant’s evidence to be, in fact, trustworthy, not simply plausible. State v. Blackwell‑Selim (S.C. 2011) 392 S.C. 1, 707 S.E.2d 426. Pardon and Parole 58

Trial court was required to make specific findings of fact on record as to whether defendant, convicted of voluntary manslaughter of her live‑in boyfriend, suffered domestic violence at hands of boyfriend, in considering whether defendant was eligible for early parole after serving one‑fourth of 20‑year prison sentence. State v. Blackwell‑Selim (S.C. 2011) 392 S.C. 1, 707 S.E.2d 426. Pardon and Parole 54

Defendant was not entitled to early release under statute that allowed early parole when the accused at the time they pled guilty to, nolo contendere to, or was convicted of an offense against the household member presented credible evidence of a history of criminal domestic violence suffered at the hands of the household member; defendant failed to produce credible evidence of a history of criminal domestic violence between the parties and she failed to satisfy the preponderance of the evidence standard. State v. Blackwell‑Selim (S.C.App. 2009) 385 S.C. 394, 684 S.E.2d 208, rehearing denied, certiorari granted, opinion vacated 392 S.C. 1, 707 S.E.2d 426. Pardon And Parole 58

Legislature did not intend the mere production of evidence to automatically result in earlier parole eligibility when enacting statute enabling a defendant who was subjected to a history of domestic violence from the victim to be eligible for parole after service of one‑fourth of the prison term; instead, the legislature intended a defendant to present credible evidence of such domestic violence. State v. Grooms (S.C. 2000) 343 S.C. 248, 540 S.E.2d 99. Pardon And Parole 50

2. Presumptions and burden of proof

A history of domestic violence committed against the defendant by a household member, as required for the defendant to be eligible for early parole after serving one‑fourth of a prison term for a crime against the household member, must be proven by a preponderance of the evidence. State v. Blackwell‑Selim (S.C. 2011) 392 S.C. 1, 707 S.E.2d 426. Pardon and Parole 58

A defendant must prove by a preponderance of the evidence a history of domestic violence from the victim in order to be eligible for statutory early parole. State v. Grooms (S.C. 2000) 343 S.C. 248, 540 S.E.2d 99. Pardon And Parole 58

**SECTION 16‑25‑100.** Judicial training on issues concerning domestic violence.

 Magistrates, municipal court judges, family court judges, and circuit court judges shall receive continuing legal education on issues concerning domestic violence. The frequency and content of the continuing legal education is to be determined by the South Carolina Court Administration at the direction of the Chief Justice of the South Carolina Supreme Court.

HISTORY: 2005 Act No. 166, Section 4, eff January 1, 2006.

**SECTION 16‑25‑120.** Release on bond; factors; issuance of restraining order; notice of right to counsel.

 (A) In addition to the provisions of Section 17‑15‑30, the court must consider the factors provided in subsection (B) when considering release of a person on bond who is charged with a violent offense, as defined in Section 16‑1‑60, when the victim of the offense is a household member, as defined in Section 16‑25‑10, and the person:

 (1) is subject to the terms of a valid order of protection or restraining order at the time of the offense in this State or another state; or

 (2) has a previous conviction involving the violation of a valid order of protection or restraining order in this State or another state.

 (B) The court must consider the following factors before release of a person on bond who is subject to the provisions of subsection (A):

 (1) whether the person has a history of domestic violence, as defined in this article, or a history of other violent offenses, as defined in Section 16‑1‑60;

 (2) the mental health of the person;

 (3) whether the person has a history of violating the orders of a court or other governmental agency; and

 (4) whether the person poses a potential threat to another person.

 (C) When considering release of a person on bond under this section, the court must consider whether to issue a restraining order or order of protection provided for in Chapter 4 of Title 20 against the person. The court must consider the factors enumerated in subsection (B) of this section, and if it determines in its discretion that a restraining order or order of protection is required, it should issue the order or forward the matter to the appropriate court.

 (D)(1) At the bond hearing pursuant to the provisions of this section or another provision of law, the court shall inform in writing the person charged with a violation of Article 1, Chapter 25, Title 16 of his right to obtain counsel and, if indigent, his right to court‑appointed counsel along with instructions on how to obtain court‑appointed counsel.

 (2) If the court decides to release the person pending his trial, the court shall provide the person with a written notice that must conspicuously bear the following language:

 “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.”.

 (3) The court shall provide the person with an opportunity to sign the notice evidencing the person’s acknowledgment of having received and read the notice.

HISTORY: 2005 Act No. 166, Section 5, eff January 1, 2006; 2008 Act No. 319, Section 4, eff June 11, 2008; 2015 Act No. 58 (S.3), Pt III, Section 13, eff June 4, 2015.

Effect of Amendment

2015 Act No. 58, Section 13, in (A) and (B), substituted “must consider” for “may consider”; and in (B)(1), deleted “criminal” before “domestic violence”.

Library References

Bail 42.5, 43.

Westlaw Topic No. 49.

C.J.S. Bail; Release and Detention Pending Proceedings Sections 17 to 18, 21, 23, 26 to 32.

**SECTION 16‑25‑125.** Trespass upon grounds or structure of domestic violence shelter; penalty; notice.

 (A) For purposes of this section:

 (1) “Domestic violence shelter” means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

 (2) “Grounds” means the real property of the parcel of land upon which a domestic violence shelter or a domestic violence shelter’s administrative offices are located, whether fenced or unfenced.

 (3) “Household member” means a household member as defined in Section 16‑25‑10.

 (B) It is unlawful for a person who has been charged with or convicted of a violation of Section 16‑25‑20 or Section 16‑25‑65, who is subject to an order of protection issued pursuant to Chapter 4 of Title 20, or who is subject to a restraining order issued pursuant to Article 17, Chapter 3 of Title 16, 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.

 (C) The domestic violence shelter must post signs at conspicuous places on the grounds of the domestic violence shelter and the domestic violence shelter’s administrative offices which, at a minimum, read substantially as follows:

“NO TRESPASSING

VIOLATORS WILL BE SUBJECT TO CRIMINAL PENALTIES”.

 (D) This section does not apply if the person has legitimate business or any authorization, license, or invitation to enter or remain upon the grounds or structure of the domestic violence shelter or the domestic violence shelter’s administrative offices.

 (E) A person who violates this section 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.

HISTORY: 2008 Act No. 319, Section 1, eff June 11, 2008.

Library References

Trespass 78, 91.

Westlaw Topic No. 386.

C.J.S. Trespass Section 173.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

ARTICLE 3

Domestic Violence Advisory Committee

**SECTION 16‑25‑310.** Definitions.

 For purposes of this article:

 (1) “Committee” means the Domestic Violence Advisory Committee.

 (2) “Household member” means a household member as defined in Section 16‑25‑10.

 (3) “Meeting” means both in‑person meetings and meetings through telephone conferencing.

 (4) “Provider of medical care” means a licensed health care practitioner who provides, or a licensed health care facility through which is provided, medical evaluation or treatment, including dental and mental health evaluation or treatment.

 (5) “Working day” means Monday through Friday, excluding official state holidays.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Domestic Violence Section 23, The Criminal Domestic Violence Act.

**SECTION 16‑25‑320.** Multidisciplinary Domestic Violence Advisory Committee created.

 (A) There is created a multidisciplinary Domestic Violence Advisory Committee composed of:

 (1) the Attorney General of the State of South Carolina, or a designee, who serves ex officio;

 (2) the Director of the South Carolina Department of Social Services, or a designee, who serves ex officio;

 (3) the Director of the South Carolina Department of Health and Environmental Control, or a designee, who serves ex officio;

 (4) the Director of the South Carolina Criminal Justice Academy, or a designee, who serves ex officio;

 (5) the Chief of the South Carolina Law Enforcement Division, or a designee, who serves ex officio;

 (6) the Director of the South Carolina Department of Alcohol and Other Drug Abuse Services, or a designee, who serves ex officio;

 (7) the Director of the South Carolina Department of Mental Health, or a designee, who serves ex officio;

 (8) a county coroner or medical examiner, appointed by the Governor on the recommendation of the South Carolina Criminal Justice Academy, who serves ex officio;

 (9) a solicitor, appointed by the Governor on the recommendation of the Attorney General, who serves ex officio;

 (10) a sheriff, appointed by the Governor on the recommendation of the Sheriffs’ Association;

 (11) a victim advocate, appointed by the Governor on the recommendation of the Office of the Attorney General, South Carolina Crime Victim Services Division;

 (12) a physician with experience in treating victims of domestic violence, appointed by the Governor on the recommendation of the South Carolina Medical Association;

 (13) two members of the public at large dedicated to the issue of domestic violence, appointed by the Governor;

 (14) a police chief, appointed by the Governor on the recommendation of the Law Enforcement Officers’ Association;

 (15) one member of the South Carolina Senate, appointed by the Senate Judiciary Committee Chairman; and

 (16) one member of the South Carolina House of Representatives, appointed by the House Judiciary Committee Chairman.

 (B)(1) If an individual enumerated in subsection (A)(1) through (7) designates an employee to serve as the committee member, the designee must have administrative or program responsibilities for domestic violence.

 (2) A member appointed by the Governor shall serve a term of four years and until a successor is appointed and qualifies.

 (C) The members of the committee shall elect a chairman and vice chairman from among the membership by a majority vote. The chairman and vice chairman shall serve terms of two years.

 (D) The committee shall hold meetings at least quarterly. A majority of the committee constitutes a quorum for the purpose of holding a meeting.

 (E) Each ex officio member shall provide sufficient staff and administrative support to carry out the responsibilities of this article.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

Code Commissioner’s Note

Pursuant to 2017 Act No. 96, Section 14, the reference to “State Office of Victim Assistance of the Office of the Governor” in (A)(11) was changed to “Office of the Attorney General, South Carolina Crime Victim Services Division”.

**SECTION 16‑25‑330.** Purpose of committee.

 (A) The purpose of the Domestic Violence Advisory Committee is to decrease the incidences of domestic violence by:

 (1) developing an understanding of the causes and incidences of domestic violence;

 (2) developing plans for and implementing changes within the agencies represented on the committee which will prevent domestic violence; and

 (3) advising the Governor and the General Assembly on statutory, policy, and practice changes which will prevent domestic violence.

 (B) To achieve its purpose, the committee shall:

 (1) undertake annual statistical studies of the incidences and causes of domestic violence in this State, including an analysis of:

 (a) community and public and private agency involvement with the victims and their families;

 (b) whether the abuser has a previous criminal record involving domestic violence or assault and battery;

 (c) recidivism rates;

 (d) the presence of alcohol or drug use;

 (e) whether the abuser has participated in a batterer treatment program or other similar treatment program and the name of the program;

 (f) the success or failure rate of approved treatment programs;

 (g) married versus unmarried rates of violence; and

 (h) the rate of domestic violence per county;

 (2) consider training, including cross‑agency training, consultation, technical assistance needs, and service gaps that would decrease the likelihood of domestic violence;

 (3) determine the need for changes to any statute, regulation, policy, or procedure to decrease the incidences of domestic violence and include proposals for changes to statutes, regulations, policies, and procedures in the committee’s annual report;

 (4) educate the public regarding the incidences and causes of domestic violence, specific steps the public can undertake to prevent domestic violence, and the support that civic, philanthropic, and public service organizations can provide in assisting the committee to educate the public;

 (5) develop and implement policies and procedures for its own governance and operation;

 (6) submit to the Governor and the General Assembly a publicly available annual written report and any other reports prepared by the committee including, but not limited to, the committee’s findings and recommendations; and

 (7) review closed domestic violence cases selected by the Attorney General or solicitor’s representative on the committee to provide the commission with the best opportunity to fulfill its duties under the section.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑340.** Committee access to information and records.

 Upon request of the committee and as necessary to carry out the committee’s purpose and duties, the committee immediately must be provided:

 (1) by a provider of medical care, access to information and records regarding a person whose death is being reviewed by the department pursuant to this article;

 (2) access to all information and records maintained by any state, county, or local government agency including, but not limited to, birth certificates, law enforcement investigation data, county coroner or medical examiner investigation data, parole and probation information and records, and information and records of social services and health agencies that provided services to the victim, alleged perpetrator, and other household members.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑350.** Issuance of subpoena.

 When necessary in the discharge of the duties of the committee and upon application of the committee, the clerks of court shall issue a subpoena or subpoena duces tecum to any state, county, or local agency, board, or commission or to a representative of any state, county, or local agency, board, or commission or to a provider of medical care to compel the attendance of witnesses and production of documents, books, papers, correspondence, memoranda, and other relevant records to the discharge of the department’s duties. Failure to obey a subpoena or subpoena duces tecum issued pursuant to this section may be punished as contempt.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑360.** Confidentiality of meetings; penalty.

 (A) Meetings of the committee are closed to the public and are not subject to Chapter 4, Title 30, the Freedom of Information Act, when the committee and department are discussing an individual case of domestic violence.

 (B) Except as provided in subsection (C), meetings of the committee are open to the public and subject to the Freedom of Information Act when the committee is not discussing an individual case of domestic violence.

 (C) Information identifying a victim or a household member, guardian, or caretaker of a victim, or an alleged or suspected perpetrator of domestic violence may not be disclosed during a public meeting, and information regarding the involvement of any agency with the victim, alleged perpetrator, and other household members may not be disclosed during a public meeting.

 (D) Violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

**SECTION 16‑25‑370.** Confidentiality of information; penalty.

 (A) All information and records acquired by the committee in the exercise of their purposes and duties pursuant to this article are confidential, exempt from disclosure under Chapter 4, Title 30, the Freedom of Information Act, and only may be disclosed as necessary to carry out the committee’s and department’s duties and purposes.

 (B) Statistical compilations of data which do not contain information that would permit the identification of a person to be ascertained are public records.

 (C) Reports of the committee which do not contain information that would permit the identification of a person to be ascertained are public information.

 (D) Except as necessary to carry out the committee’s purposes and duties, members of the committee and persons attending their meeting may not disclose what transpired at a meeting which is not public under Section 16‑25‑360 and may not disclose information, the disclosure of which is prohibited by this section.

 (E) Members of the committee, persons attending a committee meeting, and persons who present information to the committee may not be required to disclose in any civil or criminal proceeding information presented in or opinions formed as a result of a meeting, except that information available from other sources is not immune from introduction into evidence through those sources solely because it was presented during proceedings of the committee or department or because it is maintained by the committee or department. Nothing in this subsection prevents a person from testifying to information obtained independently of the committee or which is public information.

 (F) Information, documents, and records of the committee are not subject to subpoena, discovery, or the Freedom of Information Act, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or the Freedom of Information Act through those sources solely because they were presented during proceedings of the committee or department or because they are maintained by the committee or department.

 (G) Violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 20, eff June 4, 2015.

ARTICLE 5

Community Domestic Violence Coordinating Councils

**SECTION 16‑25‑510.** Development of community domestic violence coordinating councils.

 The circuit solicitor shall facilitate the development of community domestic violence coordinating councils in each county or judicial circuit based upon public‑private sector collaboration.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

**SECTION 16‑25‑520.** Purpose of community domestic violence coordinating council.

 The purpose of a community domestic violence coordinating council is to:

 (1) increase the awareness and understanding of domestic violence and its consequences;

 (2) reduce the incidence of domestic violence in the county or area served; and

 (3) enhance and ensure the safety of battered individuals and their children.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

**SECTION 16‑25‑530.** Duties and responsibilities.

 The duties and responsibilities of a community domestic violence coordinating council include, but are not limited to:

 (1) promoting effective strategies of intervention for identifying the existence of domestic violence and for intervention by public and private agencies;

 (2) establishing interdisciplinary and interagency protocols for intervention with survivors of domestic violence;

 (3) facilitating communication and cooperation among agencies and organizations that are responsible for addressing domestic violence;

 (4) monitoring, evaluating, and improving the quality and effectiveness of domestic violence services and protections in the community;

 (5) providing public education and prevention activities; and

 (6) providing professional training and continuing education activities.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

**SECTION 16‑25‑540.** Membership.

 Membership on a community domestic violence coordinating council may include, but is not limited to, representatives from magistrates court, family court, law enforcement, solicitor’s office, probation and parole, batterer intervention programs or services, nonprofit battered individual’s program advocates, counseling services for children, legal services, victim assistance programs, the medical profession, substance abuse counseling programs, the clergy, survivors of domestic violence, local department of social services, and the education community. Members on the council shall develop memoranda of agreement among and between themselves to ensure clarity of roles and responsibilities in providing services to victims of domestic violence.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

**SECTION 16‑25‑550.** Revenue generation for operation and administration.

 Each community domestic violence coordinating council is responsible for generating revenue for its operation and administration.

HISTORY: 2015 Act No. 58 (S.3), Pt IV, Section 21, eff June 4, 2015.

ARTICLE 7

Domestic Violence Fatality Review Committees

**SECTION 16‑25‑710.** Short title.

 This article may be cited as the “Domestic Violence Fatality Review Committees”.

HISTORY: 2016 Act No. 147 (H.4666), Section 1, eff March 15, 2016.

**SECTION 16‑25‑720.** Establishment of interagency circuit‑wide committees; protocols; membership of committees; confidential information; limitation in investigations; access to information.

 (A) Each Circuit Solicitor shall establish an interagency circuit‑wide Domestic Violence Fatality Review Committee to assist local agencies in identifying and reviewing domestic violence deaths, including homicides and suicides, and facilitating communication among the various agencies involved in domestic violence cases pursuant to the provisions of this chapter or any other relevant provision of law.

 (B) The South Carolina Commission on Prosecution Coordination shall:

 (1) develop a protocol for domestic violence fatality reviews; and

 (2) develop a protocol that must be used as a guideline to assist coroners and other persons who perform autopsies on domestic violence victims in the identification of domestic violence, in the determination of whether domestic violence contributed to the death or whether domestic violence occurred prior to death but was not the actual cause of death, and in the proper written reporting procedures for domestic violence, including the designation of the cause and mode of death.

 (C) Domestic violence fatality review committees may be comprised of, but not limited to, the following:

 (1) experts in the field of forensic pathology;

 (2) medical personnel with expertise in domestic violence;

 (3) coroners and medical examiners;

 (4) criminologists;

 (5) assistant solicitors;

 (6) domestic violence abuse organization staff;

 (7) legal aid attorneys who represent victims of abuse;

 (8) a representative of the local bar associations;

 (9) local and state law enforcement personnel;

 (10) representatives of local agencies that are involved with domestic violence abuse reporting;

 (11) county health department staff who deal with domestic violence victims’ health issues;

 (12) representatives of local child abuse agencies; and

 (13) local professional associations of persons described in this subsection.

 (D) An oral or written communication or a document shared within or produced by a domestic violence fatality review committee related to a domestic violence death is confidential and not subject to disclosure pursuant to Chapter 4, Title 30, the Freedom of Information Act, or discoverable by a third party. An oral or written communication or a document provided by a third party to a domestic violence fatality review committee is confidential and not subject to disclosure pursuant to the Freedom of Information Act or discoverable by a third party. However, recommendations of a domestic violence fatality review committee upon the completion of a review may be disclosed at the discretion of a majority of the members of the committee.

 (E) Only deaths in which the investigation is closed and there is not a pending prosecution may be reviewed by a domestic violence fatality review committee.

 (F) Upon request of the domestic violence fatality review committee and as necessary to carry out the committee’s purpose and duties, as allowed by law, the committee immediately must be provided:

 (1) by a provider of medical care, access to information and records regarding a person whose death is being reviewed by the committee pursuant to this article;

 (2) access to all information and records maintained by any state, county, or local governmental agency including, but not limited to, birth certificates, law enforcement investigation data, county coroner or medical examiner investigation data, parole and probation information and records, and information and records of social services and health agencies that provided services to the victim, alleged perpetrator, and other household members.

HISTORY: 2016 Act No. 147 (H.4666), Section 1, eff March 15, 2016.

**SECTION 16‑25‑730.** Certain meetings closed to public; penalties.

 Meetings of the committee are closed to the public and are not subject to the provisions of the Freedom of Information Act when the committee is discussing an individual case. A violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

HISTORY: 2016 Act No. 147 (H.4666), Section 1, eff March 15, 2016.

**SECTION 16‑25‑740.** Confidential information and records.

 (A) All information and records acquired by the committee in the exercise of their purposes and duties pursuant to this article are confidential, exempt from disclosure under the Freedom of Information Act, and only may be disclosed as necessary to carry out the committee’s duties and purposes.

 (B) Except as necessary to carry out the committee’s purposes and duties, members of the committee and persons attending their meeting may not disclose what transpired at a meeting which is not public under the Freedom of Information Act, and may not disclose information, the disclosure of which is prohibited by this section.

 (C) Members of the committee, persons attending a committee meeting, and persons who present information to the committee may not be required to disclose in any civil or criminal proceeding information presented in or opinions formed as a result of a meeting, except that information available from other sources is not immune from introduction into evidence through those sources solely because it was presented during proceedings of the committee or because it is maintained by the committee. Nothing in this subsection prevents a person from testifying to information obtained independently of the committee or which is public information.

 (D) Information, documents, and records of the committee are not subject to subpoena, discovery, or the Freedom of Information Act, except that information, documents, and records otherwise available from other sources are not immune from subpoena, discovery, or the Freedom of Information Act through those sources solely because they were presented during proceedings of the committee or because they are maintained by the committee.

 (E) Except as necessary to carry out the committee’s purposes and duties, members of the committee are not to keep in their possession copies of information, documents, and records subpoenaed or otherwise obtained by or created by the committee. Upon the completion of an investigation, all information, documents, and records subpoenaed or otherwise obtained by or created by the committee shall remain with the Office of the Circuit Solicitor and retained pursuant to that office’s policies.

 (F) A violation of this section is a misdemeanor and, upon conviction, a person must be fined not more than five hundred dollars or imprisoned for not more than six months, or both.

HISTORY: 2016 Act No. 147 (H.4666), Section 1, eff March 15, 2016.

**SECTION 16‑25‑750.** Recommendations.

 Each domestic fatality review committee shall make recommendations, when appropriate to, but not limited to, the Domestic Violence Advisory Committee created pursuant to Section 16‑25‑310 regarding:

 (1) training, including cross‑agency training, consultation, technical assistance needs, and service gaps that would decrease the likelihood of domestic violence;

 (2) the need for changes to any statute, regulation, policy, or procedure to decrease the incidences of domestic violence and include proposals for changes to statutes, regulations, policies, and procedures in the committee’s annual report;

 (3) education of the public regarding the incidences and causes of domestic violence, specific steps the public can undertake to prevent domestic violence, and the support that civic, philanthropic, and public service organizations can provide in assisting the committee to educate the public;

 (4) training of medical examiners, coroners, law enforcement, and other emergency responders on the causes and identification of domestic violence incidents, indicators, and injuries; and

 (5) the development and implementation of policies and procedures for its own governance and operation.

HISTORY: 2016 Act No. 147 (H.4666), Section 1, eff March 15, 2016.