~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 11, 2009

**S. 107**

Introduced by Senators Ryberg, Bryant, Massey, Peeler and L. Martin

S. Printed 3/11/09--S.

Read the first time January 13, 2009.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 107) to amend Section 16‑3‑654 of the 1976 Code, relating to criminal sexual conduct in the third degree, to include sexual battery when the victim is a student, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting:

/ SECTION 1. Article 7, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑750. (A) For purposes of this section:

(1) ‘Aggravated coercion’ means that the person affiliated with a public or private secondary school in an official capacity threatens to use force or violence of a high and aggravated nature to overcome the student, if the student reasonably believes that the person has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping, or extortion, under circumstances of aggravation, against the student.

(2) ‘Aggravated force’ means that the person affiliated with a public or private secondary school in an official capacity uses physical force or physical violence of a high and aggravated nature to overcome the student or includes the threat of the use of a deadly weapon.

(3) ‘Person affiliated with a public or private secondary school in an official capacity’ means an administrator, teacher, substitute teacher, teacher’s assistant, student teacher, law enforcement officer, school bus driver, guidance counselor, or coach who is affiliated with a public or private secondary school but is not a student enrolled in the school.

(4) ‘Secondary school’ means either a junior high school or a high school.

(5) ‘Sexual battery’ means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(6) ‘Student’ means a person who is enrolled in a school.

(B) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is sixteen or seventeen years of age, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

(C) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is eighteen years of age or older, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for thirty days, or both.

(D) This section does not apply if the person affiliated with a public or private secondary school in an official capacity is lawfully married to the student at the time of the act.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

Renumber sections to conform.

Amend title to conform.

C. BRADLEY HUTTO for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

Minimal (Some additional costs expected but can be absorbed)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

$0 (No additional expenditures or savings are expected)

**EXPLANATION OF IMPACT:**

The Judicial Department and the Department of Corrections each indicate this bill will have a minimal impact on expenditures which can be absorbed within existing resources.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND SECTION 16‑3‑654 OF THE 1976 CODE, RELATING TO CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE, TO INCLUDE SEXUAL BATTERY WHEN THE VICTIM IS A STUDENT SIXTEEN YEARS OF AGE OR OLDER AND THE ACTOR IS A PERSON EMPLOYED AT A PUBLIC OR PRIVATE SECONDARY SCHOOL, UNDER CERTAIN CIRCUMSTANCES.

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

SECTION 1. Section 16‑3‑654 of the 1976 Code is amended to read:

“Section 16‑3‑654. (1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if ~~any~~ one or more of the following circumstances are proven:

(a) ~~The~~ the actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances~~.~~;

(b) ~~The~~ the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery~~.~~; or

(c) the actor is employed at a public or private secondary school and the victim is a person sixteen years of age or older who is currently enrolled in a public or private secondary school at which the employee works or has supervisory authority and aggravated force or aggravated coercion was not used to accomplish the sexual battery.

(2) A person who commits criminal sexual conduct in the third degree is guilty of a felony ~~punishable by imprisonment~~ and, upon conviction, must be imprisoned for not more than ten years~~, according to the discretion of the court~~.

(3) The provisions of subsection (1)(c) do not apply to a person employed at a public or private secondary school who is lawfully married to the person enrolled in the school.”

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

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