RECALLED

May 19, 2009

**H. 3853**

Introduced by Rep. Hart

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Read the first time April 1, 2009.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING CHAPTER 29 TO TITLE 14 SO AS TO ENACT THE “MIDDLE COURT PROCESSES ACT”, TO REQUIRE THE CREATION AND ADMINISTRATION OF A MIDDLE COURT PROCESS IN EACH JUDICIAL CIRCUIT BY THE ATTORNEY GENERAL, TO PROVIDE FOR THE APPOINTMENT, POWERS, AND DUTIES OF A MIDDLE COURT JUDGE, TO PROVIDE REQUIREMENTS FOR AN OFFENDER TO QUALIFY FOR ADMISSION TO A MIDDLE COURT PROCESS, AND TO REQUIRE FUNDING OF THE MIDDLE COURT PROCESS BY THE GENERAL ASSEMBLY TO THE JUDICIAL DEPARTMENT, THE OFFICE OF THE ATTORNEY GENERAL, AND THE DEPARTMENT OF PROBATION, PAROLE AND PARDON SERVICES.

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

SECTION 1. Title 14 of the 1976 Code is amended by adding:

“CHAPTER 29

Middle Courts

Section 14‑29‑10. This section may be cited as the ‘Middle Court Processes Act’.

Section 14‑29‑20. The General Assembly recognizes that the drug court process existing in various counties has been successful in rehabilitating nonviolent drug and drug‑related offenders who otherwise likely would be sentenced to prison. The purpose of this chapter is to incorporate, build upon, and expand the successes and scope of the drug court concept by establishing a statewide middle court process that is not limited to drug offenses and shall promote the rehabilitation and reentry of certain nonviolent offenders into society and reserve the state’s prisons for those dangerous offenders and others for whom prison is the best alternative in the criminal justice system. This chapter intends to set standards and procedures to facilitate the creation and continuation of these programs across the State, while leaving local jurisdictions the flexibility to tailor individual programs to local needs.

Section 14‑29‑30. Each judicial circuit shall establish a middle court process, subject to the availability of funds. Each circuit which receives state funding for the implementation of a middle court program shall establish and administer at least one middle court program for the circuit within one hundred eighty days of the effective date of this act. The Attorney General shall establish a middle court program in each circuit. The Department of Probation, Parole and Pardon Services shall administer the program and ensure that all eligible persons are permitted to apply for admission to the program.

Section 14‑29‑40. (A) The Supreme Court shall appoint judges of the middle court upon the recommendation of the Chief Administrative Judge for that judicial circuit.

(B) A middle court judge must:

(1) be a member in good standing with the South Carolina Bar or a member, active or retired, of the Unified Judicial System;

(2) serve at the pleasure of the Supreme Court for a term of two years and may be reappointed;

(3) receive no salary for his service as a middle court judge and must serve as a middle court judge on a voluntary basis;

(4) receive an allowance for mileage, subsistence, and per diem when engaged in the exercise of his duties as a middle court judge, to be paid from an approved account established for this purpose by his appointing authority;

(5) be exempt during his term from Rule 608, South Carolina Appellate Court Rules, relating to the appointment of lawyers for indigents;

(6) enjoy in a middle court proceeding or action the same privileges, immunities, and protections from civil liability as a circuit court judge;

(7) receive training provided for this service; and

(8) reside in the judicial circuit where he serves.

(C) A middle court judge shall preside subject to the Code of Judicial Conduct and with the goal of instilling discipline in participants to a middle court proceeding, promoting the participant’s rehabilitation, and encouraging the participant’s successful completion of the middle court process. A middle court judge has the authority of a circuit court judge acting in probation matters, including, among other things, the authority to:

(1) maintain order and decorum in all proceedings, including use of the contempt power;

(2) issue an order of acceptance of a participant in the process and an order of dismissal from the process;

(3) impose by written order a sanction dismissing a participant from the middle court process or incarcerating him for no more than seven days for failing to meet a condition, requirement, or goal ordered by the middle court;

(4) issue to a participant a certificate indicating his successful completion of the middle court process;

(5) order conditions or requirements of a rehabilitation plan for a participant, developed after consultation with the circuit solicitor, a drug counselor, and other professionals and people the middle court judge considers beneficial, with the conditions and requirements to include school, education, vocational training, work, drug testing, counseling, reporting, treatment, curfew, monitoring, restitution, community service, batterer’s treatment, anger management, personal hygiene, meetings, and other measures the judge considers appropriate and orders; and

(6) take action he considers necessary to carry out the middle court’s functions provided in this chapter.

Section 14‑29‑50. (A) A person seeking admission to the middle court process:

(1) must execute a middle court agreement specified in this chapter;

(2) must receive approval of a circuit court judge of competent jurisdiction;

(3) previously may not have been admitted to a middle court procedure;

(4) may have no prior conviction or current conviction for:

(a) a violent crime as defined in Section 16‑1‑60;

(b) an offense for which the offender was placed on the sex offender registry pursuant to Section 23‑3‑430;

(c) the offense of lynching in the first degree pursuant to Section 16‑3‑210 or lynching in the second degree pursuant to Section 16‑3‑220;

(d) the common law offense of assault and battery of a high and aggravated nature;

(e) the offense of carjacking pursuant to Section 16‑3‑1075;

(f) the offense of harassment or stalking pursuant to Article 17, Chapter 3, Title 16;

(g) the offense of causing great bodily injury or death by operating a vehicle while under the influence of drugs or alcohol pursuant to Section 56‑5‑2945; or

(h) a criminal domestic violence offense pursuant to Chapter 25, Title 16; and

(5) must have an active sentence exceeding ninety days in general sessions court for a nonviolent crime not exempted pursuant to item (4), except a middle court judge may allow a person convicted of burglary in the second degree, attempted burglary in the second degree, or accessory before the fact of burglary in the second degree to enter the process if the circumstances of the offense did not involve an act of actual violence to another person.

(B) A middle court agreement required in subsection (A) may serve as the offender’s application for admission to a middle court process and jurisdiction, and shall include:

(1) an acknowledgement by the offender that his application is voluntary and freely entered into;

(2) an agreement that, if accepted, he will comply with all conditions, rules and requirements imposed upon him in the middle court process, including a rehabilitation plan;

(3) an acknowledgement that, if accepted, he may be dismissed from the process at the discretion of the middle court judge and consequently transferred to the circuit court for commencement of his entire original sentence, without reduction;

(4) an acknowledgement and agreement that he has no right to appeal or enjoin a decision of the middle court judge;

(5) an acknowledgement and agreement that the post‑conviction relief procedures do not apply to the middle court process, and a relinquishment of all rights to post‑conviction relief;

(6) an agreement to cooperate fully with a person involved in his rehabilitation plan and to comply with the requirements and conditions of the plan, including the submission to analysis, testing, treatment, counseling, evaluation, and providing of complete personal, health, and family information, and executing releases to accomplish the provision of this information;

(7) an acknowledgement and agreement that information and test results produced by the middle court process become and remain the property of law enforcement and may be used against him. However, the information and test results may not be used as the sole or independent basis of a criminal prosecution of the offender for actions preceding his acceptance into the middle court process;

(8) an agreement to bear, subject to his ability to pay, the costs of analysis, testing, treatment, counseling, or evaluation in a rehabilitation plan prescribed in the process, and an agreement that funds paid by the participant or on his behalf during the course of the middle court process may not be refundable in any event, including his dismissal from the process;

(9) a general explanation of the purpose and concept of the middle court process;

(10) a statement of the offender’s knowing, willing, and full consent and submission to the authority of the middle court and its process;

(11) the signature of the offender and, if any, his counsel; and

(12) other statements, acknowledgements, or agreements the circuit solicitor may consider appropriate.

(C) In determining whether to accept an offender for admission to the middle court process, the middle court judge shall consider, among other things:

(1) the middle court agreement presented by the offender;

(2) the nature of the offense for which the offender was convicted in circuit court;

(3) the offender’s prior criminal history;

(4) the offender’s prior substance abuse history;

(5) the likelihood that the offender successfully will complete the process;

(6) the risk and danger posed to the community by the offender’s remaining at large;

(7) the benefits likely resulting to the community and this State from the offender’s acceptance into the process, including cost savings, public service or private employment, enhancement of the offender’s ability to pay restitution, support or comfort of his family, and the decreased likelihood of future criminal activity;

(8) the benefits likely resulting to the offender upon his being accepted into the process, including drug rehabilitation, education, training, family support, discipline, employment, physical and mental health, and the opportunity for a productive life;

(9) a positive recommendation or statement from the victim, the victim’s family, law enforcement, or the community, the recommendation after screening by a qualified person selected by the solicitor or provided by a state, county, or municipal agency to determine the mental health or drug dependence of the applicant and his likelihood of successful completion of a rehabilitation plan prescribed in this process;

(10) any recommendation or statement requested by the middle court judge from a solicitor, probation or parole official, or prison official;

(11) the risk and danger posed to the victim or victim’s family by the offender remaining at large; and

(12) other circumstances or matters the middle court judge may consider appropriate.

(D) The middle court’s acceptance of the offender as a participant must be presented to the circuit court. The circuit court, in its discretion, may order the transfer of the offender to the custody and jurisdiction of the middle court for commencement of the middle court process. The circuit court shall provide in its order that the participant must be returned to the circuit court for final disposition, as provided in this chapter, upon his successful completion of the process or his dismissal from the process.

(E) Notice must be provided to all victims pursuant to the Victims’ Bill of Rights.

Section 14‑29‑60. (A) When establishing a middle court process, the Attorney General:

(1) may address the particular requirements and circumstances of each circuit. The procedure is subject to and consistent with the uniform procedures provided in this chapter, including:

(a) a middle court process must be at least twelve months in duration but no more than eighteen months in duration for a participant, although the process may be extended for a maximum of six additional months by the middle court;

(b) a middle court session must be held in a courtroom or other place the middle court judge considers appropriate and where proper decorum, safety, and efficiency must be maintained;

(c) a middle court session must be held at a time and place that will promote the maximum convenience and attendance of associated parties, especially a participating offender and his family, and, absent a compelling reason, should be held on a weekday and commencing no earlier than 5:30 p.m.;

(d) a middle court session for an individual participant must be held no less than every fourteen days until the participant has successfully completed twelve months of the process, at which time the court may allow the participant to attend a session no less than once every thirty days; and

(e) a middle court process may require the presence of a person necessary for the efficient operation of a middle court session;

(2) shall designate in his office a person to serve as his administrator of the process to supervise and coordinate the implementation of the program by the Department of Probation, Parole and Pardon Services. These duties shall include the scheduling of the hearings, notification of the persons involved, maintenance and safeguarding of all records and orders associated with the process, filing of all orders and other appropriate documents with the appropriate clerk of court, and the production of a report required by this chapter; and

(3) through his designated administrator, shall supervise and coordinate the selection by the Department of Probation, Parole and Pardon Services of counselors or other professionals to analyze, test, treat, and evaluate an applicant or participant contemplated in this chapter, and at least annually shall report to the Attorney General information regarding funds expended by the Department of Probation, Parole and Pardon Services for these purposes.

(B) The Attorney General shall assist the Supreme Court, the Department of Probation, Parole and Pardon Services, and middle court in establishing a uniform system of procedures, statistics, and processes as set forth in this chapter, collecting reports he prescribes from the circuit administrator in order to measure the progress and operations of the middle courts, and annually issuing a comprehensive report of his findings and recommendations no later than July thirtieth.

(C) The Supreme Court may propose and adopt rules for the middle court process in the same manner as it proposes and promulgates rules for other courts in the Unified Judicial System.

Section 14‑29‑70. (A) The transfer of an offender from the custody and jurisdiction of the circuit court to custody and jurisdiction of the middle court must be made by issue of a written order from the circuit court in response to the approval of the application by the middle court. This order must provide for the suspension of the offender’s sentence pending the conclusion of the middle court process. The middle court then shall control and be responsible for the custody of the offender upon entry of the circuit court’s order.

(B) A middle court judge must transfer to the circuit court custody of a person who successfully completes the middle court process and the circuit court must immediately release the successful participant from his sentence. Where a person fails to successfully complete a middle court process and is consequently dismissed from the process, the middle court must transfer custody of the person to the circuit court for commencement of the sentence interrupted by the middle court process. A court may not reduce a sentence for time spent participating in a middle court process and other conditions of the sentence.

(C) The constitutional notice requirements of the Victims’ Bill of Rights apply to a transfer, completion, or failure pursuant to this section.

Section 14‑29‑80. Nothing contained in this chapter affects the operation or establishment of juvenile drug courts in South Carolina.

Section 14‑29‑90. The General Assembly shall appropriate funds annually to an account to be maintained by the Supreme Court for the payment of mileage, subsistence, and per diem for middle court judges as provided by this chapter.

Section 14‑29‑100. The General Assembly annually shall appropriate funds to the Judicial Department, Office of the Attorney General, and the Department of Probation, Parole and

Pardon Services for the employment and support of a middle court administrator for each circuit and other costs associated with the process as provided by this chapter.”

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. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

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

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