**South Carolina General Assembly**

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**H. 4470**

**STATUS INFORMATION**

General Bill

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Summary: Home Invasion and Drive-By Shooting Accountability and Protection Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

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11/29/2011 House Referred to Committee on **Judiciary**

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1/10/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 52](file:///h:\hj%20archive\2012\01-10-12.docx))

**VERSIONS OF THIS BILL**

[11/29/2011](file:///p:\pprever\2011-12\4470_20111129.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “HOME INVASION AND DRIVE-BY SHOOTING ACCOUNTABILITY AND PROTECTION ACT”; BY ADDING SECTION 16‑11‑395 TO ESTABLISH THE OFFENSES OF HOME INVASION IN THE FIRST, SECOND, AND THIRD DEGREES, AND TO PROVIDE GRADUATED PENALTIES; BY ADDING SECTION 16-3-624 SO AS TO CREATE THE OFFENSE OF COMMITTING A DRIVE-BY SHOOTING, AND TO PROVIDE A PENALTY; TO AMEND SECTION 16‑1‑60, AS AMENDED, RELATING TO THE LIST OF VIOLENT CRIMES, SO AS TO INCLUDE HOME INVASION, FIRST AND SECOND DEGREE AND DRIVE-BY SHOOTING; AND TO AMEND SECTION 16‑3‑20, AS AMENDED, RELATING TO THE PUNISHMENT FOR MURDER, SO AS TO INCLUDE AS SEPARATE STATUTORY AGGRAVATING CIRCUMSTANCES WHICH MAY BE CONSIDERED IN THE DETERMINATION OF WHETHER THE DEATH PENALTY SHOULD BE IMPOSED, A MURDER COMMITTED WHILE IN THE COMMISSION OF THE OFFENSES OF HOME INVASION IN THE FIRST DEGREE AND DRIVE-BY SHOOTING.

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

SECTION 1. This act may be cited as the “Home Invasion and Drive-by Shooting Accountability and Protection Act”.

SECTION 2. Article 5, Chapter 11, Title 16 of the 1976 Code is amended by adding:

“Section 16‑11‑395. (A) As used in this section, the term:

(1) ‘Dwelling’ is as defined in Section 16‑11‑310.

(2) ‘Enters a dwelling without consent’ is as defined in Section 16‑11‑310.

(3) ‘Dangerous weapon’ means a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, dirk, slingshot, metal knuckles, razor, other deadly weapon, or another item that appears to be one of these.

(B) A person is guilty of home invasion in the first degree if the person:

(1) enters a dwelling without consent;

(2) with the intent to commit a felony, larceny, or assault in the dwelling;

(3) is armed with a dangerous weapon; and

(4) personally uses a dangerous weapon that proximately causes great bodily harm, permanent disability or disfigurement, or death to a person who is lawfully present in the dwelling.

(C) A person is guilty of home invasion in the second degree if the person:

(1) enters a dwelling without consent;

(2) with the intent to commit a felony, larceny, or assault in the dwelling;

(3) is armed with a dangerous weapon; and

(4) uses force or threatens the use of force on a person who is lawfully present in the dwelling.

(D) A person is guilty of home invasion in the third degree if the person:

(1) enters a dwelling without consent;

(2) with the intent to commit a felony, larceny, or assault in the dwelling;

(3) is armed with a dangerous weapon; and

(4) another person is lawfully present in the dwelling.

(E) This section does not apply to a law enforcement officer acting within the scope of his official duties.

(F) A person who violates the provisions of subsection (B) regarding home invasion in the first degree is guilty of a felony and, upon conviction, must be imprisoned for not less than a mandatory minimum term of imprisonment of twenty‑five years, no part of which may be suspended or probation granted, nor more than life imprisonment and which must be served consecutively to another sentence imposed.

(G) A person who violates the provisions of subsection (C) regarding home invasion in the second degree is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than twenty years, no part of which may be suspended or probation granted, and which must be served consecutively to another sentence imposed.

(H) A person who violates the provisions of subsection (D) regarding home invasion in the third degree is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum term of not less than fifteen years, no part of which may be suspended or probation granted, and which must be served consecutively to another sentence imposed.

(I) A person sentenced to a mandatory minimum term of imprisonment pursuant to this section is not eligible for parole or an early release program, nor is the person eligible to receive work credits, education credits, good conduct credits, or other credits that would reduce the mandatory minimum term of imprisonment required by this section.”

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

“Section 16‑3‑624. (A) For the purposes of this section, the term ‘firearm’ means a weapon which is designed to or readily may be converted to expel a projectile by the action of an explosive or the frame or receiver of that weapon.

(B) A person who recklessly discharges a firearm in a manner which creates a substantial risk of death or great bodily injury to another person and the discharge of the firearm is from a motor vehicle, as defined in Section 38‑77‑30, or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge of the firearm is guilty of the felony offense of committing a drive‑by shooting and, upon conviction, must be fined not more than ten thousand dollars and imprisoned for a mandatory minimum term of twenty‑five years to life. No part of the mandatory minimum twenty‑five years may be suspended nor probation granted.”

SECTION 4. Section 16‑1‑60 of the 1976 Code, as last amended by Act 289 of 2010, is further amended to read:

“Section 16‑1‑60. For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16‑3‑10); attempted murder (Section 16‑3‑29); assault and battery by mob, first degree, resulting in death (Section 16‑3‑210(B)), criminal sexual conduct in the first and second degree (Sections 16‑3‑652 and 16‑3‑653); criminal sexual conduct with minors, first and second degree (Section 16‑3‑655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16‑3‑656); assault and battery with intent to kill (Section 16‑3‑620); assault and battery of a high and aggravated nature (Section 16‑3‑600(B)); kidnapping (Section 16‑3‑910); trafficking in persons (Section 16‑3‑930); voluntary manslaughter (Section 16‑3‑50); armed robbery (Section 16‑11‑330(A)); attempted armed robbery (Section 16‑11‑330(B)); carjacking (Section 16‑3‑1075); drug trafficking as defined in Section 44‑53‑370(e) or trafficking cocaine base as defined in Section 44‑53‑375(C); manufacturing or trafficking methamphetamine as defined in Section 44‑53‑375; arson in the first degree (Section 16‑11‑110(A)); arson in the second degree (Section 16‑11‑110(B)); burglary in the first degree (Section 16‑11‑311); burglary in the second degree (Section 16‑11‑312(B)); home invasion in the first and second degree (Section 16‑11‑395); drive-by shooting (Section 16-3-624); engaging a child for a sexual performance (Section 16‑3‑810); homicide by child abuse (Section 16‑3‑85(A)(1)); aiding and abetting homicide by child abuse (Section 16‑3‑85(A)(2)); inflicting great bodily injury upon a child (Section 16‑3‑95(A)); allowing great bodily injury to be inflicted upon a child (Section 16‑3‑95(B)); criminal domestic violence of a high and aggravated nature (Section 16‑25‑65); abuse or neglect of a vulnerable adult resulting in death (Section 43‑35‑85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43‑35‑85(E)); taking of a hostage by an inmate (Section 24‑13‑450); detonating a destructive device upon the capitol grounds resulting in death with malice (Section 10‑33‑325(B)(1)); spousal sexual battery (Section 16‑3‑615); producing, directing, or promoting sexual performance by a child (Section 16‑3‑820); lewd act upon a child under sixteen (Section 16‑15‑140); sexual exploitation of a minor first degree (Section 16‑15‑395); sexual exploitation of a minor second degree (Section 16‑15‑405); promoting prostitution of a minor (Section 16‑15‑415); participating in prostitution of a minor (Section 16‑15‑425); aggravated voyeurism (Section 16‑17‑470(C)); detonating a destructive device resulting in death with malice (Section 16‑23‑720(A)(1)); detonating a destructive device resulting in death without malice (Section 16‑23‑720(A)(2)); boating under the influence resulting in death (Section 50‑21‑113(A)(2)); vessel operator’s failure to render assistance resulting in death (Section 50‑21‑130(A)(3)); damaging an airport facility or removing equipment resulting in death (Section 55‑1‑30(3)); failure to stop when signaled by a law enforcement vehicle resulting in death (Section 56‑5‑750(C)(2)); interference with traffic‑control devices, railroad signs, or signals resulting in death (Section 56‑5‑1030(B)(3)); hit and run resulting in death (Section 56‑5‑1210(A)(3)); felony driving under the influence or felony driving with an unlawful alcohol concentration resulting in death (Section 56‑5‑2945(A)(2)); putting destructive or injurious materials on a highway resulting in death (Section 57‑7‑20(D)); obstruction of a railroad resulting in death (Section 58‑17‑4090); accessory before the fact to commit any of the above offenses (Section 16‑1‑40); and attempt to commit any of the above offenses (Section 16‑1‑80). Only those offenses specifically enumerated in this section are considered violent offenses.”

SECTION 5. Section 16‑3‑20(C)(a)(1) of the 1976 Code, as last amended by Act 289 of 2010, is further amended to read:

“(1) The murder was committed while in the commission of the following crimes or acts:

(a) criminal sexual conduct in any degree;

(b) kidnapping;

(c) trafficking in persons;

(d) burglary in any degree;

(e) robbery while armed with a deadly weapon;

(f) larceny with use of a deadly weapon;

(g) killing by poison;

(h) drug trafficking as defined in Section 44‑53‑370(e), 44‑53‑375(B), 44‑53‑440, or 44‑53‑445;

(i) physical torture;

(j) dismemberment of a person; ~~or~~

(k) arson in the first degree as defined in Section 16‑11‑110(A);

(l) home invasion in the first degree as defined in Section 16‑11‑395(B); or

(m) drive-by shooting as defined in Section 16-3-624.”

SECTION 6. 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 7. 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 8. This act takes effect upon approval by the Governor.

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