~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 28, 2012

**S. 744**

Introduced by Senators L. Martin and Ford

S. Printed 3/28/12--S. [SEC 3/29/12 4:41 PM]

Read the first time March 30, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 744) to amend Article 7, Chapter 3, Title 16 of the Code of Laws of South Carolina, 1976, by adding Section 16‑3‑605, so as to provide, 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, page 2, by striking lines 15-27, and inserting:

/ (D) A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned not more than five years.

(E) A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned not more than fifteen years, if the person, while violating this section:

(1) uses or attempts to use a dangerous instrument or deadly weapon;

(2) causes great bodily injury to the other person;

(3) has previously been convicted of a violation of this section or another state’s law substantially similar to this section; or

(4) has previously been convicted of a violent crime as listed in Section 16‑1‑60.” /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

C. BRADLEY HUTTO GERALD MALLOY

For Majority. For Minority.

**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

The department indicates that this bill will have a minimal impact on the General Fund of the State, which the agency can absorb at their current level of funding.

The Department of Corrections

The department indicates that this bill will have a potential significant fiscal impact on the General Fund of the State due to the addition of the new criminal offense in Section 16-3-605 and the addition of this offense in Section 16-26-65 as a condition of the charge of Criminal Domestic Violence of a High and Aggravated Nature. Due to the lack of empirical data on this new offense the agency is unable to provide an accurate estimate as to what the fiscal impact to the agency may be.

The Department of Probation, Parole and Pardon Services

The department indicates that this bill will have no fiscal impact on the General Fund of the State, or on federal and/or other funds.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND ARTICLE 7, CHAPTER 3, TITLE 16 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑3‑605, SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO IMPEDE THE NORMAL BREATHING OR BLOOD CIRCULATION OF ANOTHER PERSON WITHOUT CONSENT BY INTENTIONALLY APPLYING PRESSURE TO THE OTHER PERSON’S THROAT OR NECK OR OBSTRUCTING THE OTHER PERSON’S NOSE OR MOUTH; AND TO AMEND SECTION 16‑25‑65 OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, SO AS TO PROVIDE THAT A PERSON WHO VIOLATES SECTION 16‑25‑20(A) OF THE CODE OF LAWS OF SOUTH CAROLINA, 1976, IS GUILTY OF THE OFFENSE OF CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE WHEN THE PERSON COMMITS A VIOLATION OF SECTION 16‑3‑605.

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

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

“Section 16‑3‑605. (A) For purpose of this section:

(1) ‘Deadly weapon’ means an instrument that can be used to inflict deadly force.

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

(3) ‘Licensed health care professional’ means a duly licensed physician, surgeon, podiatrist, osteopath, osteopathic physician, osteopathic surgeon, physician assistant, nurse, dentist, or pharmacist.

(B) It is unlawful for a person to impede the normal breathing or blood circulation of another person without consent by intentionally:

(1) applying pressure to the other person’s throat or neck; or

(2) obstructing the other person’s nose or mouth.

(C) This section does not apply if a person is:

(1) a licensed health care professional performing a valid medical procedure; or

(2) a law enforcement officer acting within the legal scope of the officer’s duties.

(D) A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned not more than ten years.

(E) A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned not more than twenty years, if the person, while violating this section:

(1) uses or attempts to use a dangerous instrument or deadly weapon;

(2) causes great bodily injury to the other person;

(3) has previously been convicted of a violation of this section or another state’s law substantially similar to this section; or

(4) has previously been convicted of a violent crime as listed in Section 16‑1‑160.”

SECTION 2. Section 16‑25‑65 of the 1976 Code is amended to read:

“Section 16‑25‑65. (A) A person who violates Section 16‑25‑20(A) is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs. The person commits:

(1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; ~~or~~

(2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death; or

(3) a violation of Section 16‑3‑605.

(B) A person who violates subsection (A) is guilty of a felony, and, upon conviction, must be imprisoned not less than a mandatory minimum of one year nor more than ten years. The court may suspend the imposition or execution of all or part of the sentence, except the one‑year mandatory minimum sentence, and place the offender on probation conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services. The offender must pay a reasonable fee for participation in the treatment program, but no person may be denied treatment due to inability to pay. If the offender suffers from a substance abuse problem, the judge may order, or the batterer treatment 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. The offender must pay a reasonable fee for participation in the substance abuse treatment program, but no person may be denied treatment due to inability to pay.

~~(C)~~ ~~The provisions of subsection (A) create a statutory offense of criminal 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.~~”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent, 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 expressly so provides. 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 4. This act takes effect upon approval by the Governor.

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