**A** **BILL**

TO AMEND SECTION 16‑3‑85, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HOMICIDE BY CHILD ABUSE, SO AS TO INCREASE THE AGE OF THE CHILD WHOSE DEATH HAS BEEN CAUSED BY CHILD ABUSE OR NEGLECT FROM ELEVEN TO EIGHTEEN FOR BOTH OFFENSES OF CAUSING DEATH OR AIDING OR ABETTING THE DEATH OF A CHILD BY ABUSE OR NEGLECT.

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

SECTION 1. Section 16‑3‑85 of the 1976 Code is amended to read:

“Section 16‑3‑85. (A) A person is guilty of homicide by child abuse if the person:

(1) causes the death of a child under the age of ~~eleven~~ eighteen while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life; or

(2) knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of ~~eleven~~ eighteen.

(B) For purposes of this section, the following definitions apply:

(1) ‘child abuse or neglect’ means an act or omission by any person which causes harm to the child’s physical health or welfare;

(2) ‘harm’ to a child’s health or welfare occurs when a person:

(a) inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment;

(b) fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so causes a physical injury or condition resulting in death; or

(c) abandons the child resulting in the child’s death.

(C) Homicide by child abuse is a felony and a person who is convicted of or pleads guilty to homicide by child abuse:

(1) ~~under~~ pursuant to subsection (A)(1) may be imprisoned for life but not less than a term of twenty years; or

(2) ~~under~~ pursuant to subsection (A)(2) must be imprisoned for a term not exceeding twenty years nor less than ten years.

(D) In sentencing a person ~~under~~ pursuant to provisions of this section, the judge must consider any aggravating circumstances including, but not limited to, a defendant’s past pattern of child abuse or neglect of a child under the age of ~~eleven~~ eighteen, and any mitigating circumstances; however, a child’s crying does not constitute provocation so as to be considered a mitigating circumstance.”

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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