**South Carolina General Assembly**

121st Session, 2015-2016

**H. 3034**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Cobb‑Hunter and M.S. McLeod

Document Path: l:\council\bills\ms\7016ahb15.docx

Introduced in the House on January 13, 2015

Currently residing in the House Committee on **Judiciary**

Summary: Domestic Violence Homicide Prevention Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/11/2014 House Prefiled

12/11/2014 House Referred to Committee on **Judiciary**

1/13/2015 House Introduced and read first time ([House Journal‑page 71](file:///h:\HJ%20Archive\2015\01-13-15.docx))

1/13/2015 House Referred to Committee on **Judiciary** ([House Journal‑page 71](file:///h:\HJ%20Archive\2015\01-13-15.docx))

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**VERSIONS OF THIS BILL**

[12/11/2014](file:///p:\pprever\2015-16\3034_20141211.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, TO ENACT THE “DOMESTIC VIOLENCE HOMICIDE PREVENTION ACT” SO AS TO PROVIDE A PROCEDURE FOR THE SURRENDER OF FIREARMS OWNED BY A PERSON CONVICTED OF CRIMINAL DOMESTIC VIOLENCE OR CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE; BY ADDING SECTION 16‑25‑130 SO AS TO CREATE THE OFFENSE OF FAILURE TO SURRENDER A FIREARM AFTER CONVICTION FOR A CRIMINAL DOMESTIC VIOLENCE OFFENSE AND TO PROVIDE A PENALTY; BY ADDING SECTION 16‑25‑140 SO AS TO PROVIDE THAT IT IS UNLAWFUL TO KNOWINGLY SELL A FIREARM TO A PERSON CONVICTED OF A CRIMINAL DOMESTIC VIOLENCE OFFENSE AND TO PROVIDE A PENALTY; TO AMEND SECTION 16‑3‑1750, AS AMENDED, RELATING TO RESTRAINING ORDERS AGAINST PERSONS ENGAGED IN HARASSMENT OR STALKING, SO AS TO INCLUDE CRIMINAL DOMESTIC VIOLENCE OFFENSES IN THE LIST OF OFFENSES THE MAGISTRATES COURT HAS JURISDICTION OVER AN ACTION SEEKING A RESTRAINING ORDER, TO ALLOW THE COURT TO ORDER THE SURRENDER OF FIREARMS IF THE COURT FINDS IMMINENT DANGER EXISTS, AND TO PROVIDE FACTORS FOR THE COURT TO CONSIDER WHEN DETERMINING IF IMMINENT DANGER EXISTS; TO AMEND SECTION 16‑25‑10, AS AMENDED, RELATING TO DEFINITIONS FOR THE PURPOSES OF CRIMINAL DOMESTIC VIOLENCE, SO AS TO ADD A DEFINITION OF “FIREARM”; TO AMEND SECTION 17‑15‑40, RELATING TO CONDITIONS OF RELEASE, SO AS TO REQUIRE THE COURT TO ORDER A PERSON CHARGED WITH A VIOLENT OFFENSE TO SURRENDER ALL FIREARMS AS A CONDITION OF BOND, TO ALLOW THE COURT TO ORDER A PERSON CHARGED WITH A CRIMINAL DOMESTIC VIOLENCE OFFENSE TO SURRENDER ALL FIREARMS AS A CONDITION OF BOND IF REQUESTED BY OR WITH THE CONSENT OF THE VICTIM, AND TO PROVIDE FACTORS FOR THE COURT TO CONSIDER WHEN DETERMINING IMMINENT DANGER; AND TO AMEND SECTION 20‑4‑60, AS AMENDED, RELATING TO ORDERS OF PROTECTION, SO AS TO ADD THAT IF AN ORDER OF PROTECTION IS ISSUED AND THE COURT FINDS IMMINENT DANGER EXISTS, THE COURT MAY ORDER THE SURRENDER OF FIREARMS AND TO PROVIDE FACTORS FOR THE COURT TO CONSIDER WHEN DETERMINING IMMINENT DANGER.

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

SECTION 1. This act may be cited as the “Domestic Violence Homicide Prevention Act”.

SECTION 2. Article 1, Chapter 25, Title 16 of the 1976 Code is amended by adding:

“Section 16‑25‑130. (A) Upon conviction of criminal domestic violence pursuant to Section 16‑25‑20 or criminal domestic violence of a high and aggravated nature pursuant to Section 16‑25‑65, the person must surrender all firearms owned by him or in his possession to the county sheriff who may handle the disposition of the firearms in his discretion.

(B) A person who fails to surrender a firearm pursuant to the requirements of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.”

SECTION 3. Article 1, Chapter 25, Title 16 of the 1976 Code is amended by adding:

“Section 16‑25‑140. (A) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State, a firearm to a person convicted of criminal domestic violence pursuant to Section 16‑25‑20 or criminal domestic violence of a high and aggravated nature pursuant to Section 16‑25‑65.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.”

SECTION 4. Section 16‑3‑1750 of the 1976 Code, as last amended by Act 106 of 2005, is further amended to read:

“Section 16‑3‑1750. (A) Pursuant to this article, the magistrates court has jurisdiction over an action seeking a restraining order against a person:

(1) engaged in harassment in the first or second degree; ~~or~~

(2) engaged in stalking; or

(3) charged with criminal domestic violence pursuant to Section 16‑25‑20 or criminal domestic violence of a high and aggravated nature pursuant to Section 16‑25‑65.

(B) An action for a restraining order must be filed in the county in which:

(1) the defendant resides when the action commences;

(2) the ~~harassment in the first or second degree or stalking~~ offense described in subsection (A) occurred; or

(3) the plaintiff resides if the defendant is a nonresident of the State or cannot be found.

(C) A complaint and motion for a restraining order may be filed by any person. The complaint must:

(1) allege that the defendant is engaged in ~~harassment in the first or second degree or stalking~~ an offense described in subsection (A) and must state the time, place, and manner of the acts complained of, and other facts and circumstances upon which relief is sought;

(2) be verified; and

(3) inform the defendant of his right to retain counsel to represent him at the hearing on the complaint.

(D) The magistrates court must provide forms to facilitate the preparation and filing of a complaint and motion for a restraining order by a plaintiff not represented by counsel. The court must not charge a fee for filing a complaint and motion for a restraining order against a person engaged in ~~harassment or stalking~~ an offense described in subsection (A). However, the court shall assess a filing fee against the nonprevailing party in an action for a restraining order. The court may hold a person in contempt of court for failure to pay this filing fee.

(E) A restraining order remains in effect for a fixed period of time of not less than one year, as determined by the court on a case‑by‑case basis.

(F) If a person is charged with criminal domestic violence pursuant to Section 16‑25‑20 or criminal domestic violence of a high and aggravated nature pursuant to Section 16‑25‑65 and the court finds that there is an imminent danger to the applicant, the court may order the surrender of all firearms, as defined in Section 16‑25‑10, to the county sheriff for the duration of the order.

(G) In determining imminent danger to the applicant, the court may consider the following:

(1) the use or threatened use of a deadly weapon by the respondent or pattern of prior conduct by the respondent involving the use of a firearm, as defined in Section 16‑25‑10;

(2) serious injury inflicted by the respondent upon the petitioner or a minor child in the petitioner’s household;

(3) threats by the respondent to seriously injure or murder the petitioner or a minor child in the petitioner’s household; or

(4) threats by the respondent to commit suicide.

(H) Upon issuance of a restraining order for which a filing fee must be paid, the magistrate shall direct the person being restrained to pay the filing fee.

(I) The court may find a person subject to a restraining order in contempt of court for failure to pay the required filing fees as ordered.

(J) Notwithstanding another provision of law, a restraining order or a temporary restraining order issued pursuant to this article is enforceable throughout this State.”

SECTION 5. Section 16‑25‑10 of the 1976 Code, as last amended by Act 166 of 2005, is further amended to read:

“Section 16‑25‑10. As used in this article~~,~~:

(1) ‘Household member’ means:

~~(1)~~(a) a spouse;

~~(2)~~(b) a former spouse;

~~(3)~~(c) persons who have a child in common; or

~~(4)~~(d) a male and female who are cohabiting or formerly have cohabited.

(2) ‘Firearm’ means ‘handgun’ as defined pursuant to Section 16‑23‑10 and also includes ‘machine gun’, ‘sawed‑off shotgun’, ‘shotgun’, ‘sawed‑off rifle’, or ‘rifle’ as defined pursuant to Section 16‑23‑210.”

SECTION 6. Section 17‑15‑40 of the 1976 Code is amended to read:

“Section 17‑15‑40. (A) ~~On~~ Upon releasing the person on any of the ~~foregoing~~ conditions contained in this chapter, the court shall issue a brief order containing a statement of the conditions imposed, informing the person of the penalties for violation of the conditions of release and stating that a warrant for the person’s arrest will be issued immediately upon ~~any such~~ a violation of a condition of release. The person released shall acknowledge his understanding of the terms and conditions of his release and the penalties and forfeitures applicable in the event of violation ~~thereof~~ of a condition of release on a form to be prescribed by the Attorney General.

(B) If a person is charged with a violent crime as defined in Section 16‑1‑60, the court must order the person, as a condition of bond, to surrender to the county sheriff all firearms, as defined in Section 16‑25‑10, that are owned or possessed by the person. The sheriff must store the firearms until final disposition of the charges.

(C) If a person is charged with criminal domestic violence pursuant to Section 16‑25‑20 or criminal domestic violence of a high and aggravated nature pursuant to Section 16‑25‑65, the court may order the person, as a condition of bond, and only when requested by or with the consent of the victim or the victim’s representative, to surrender to the county sheriff all firearms, as defined in Section 16‑25‑10, that are owned or possessed by the person. The sheriff must store the firearms until final disposition of the charges.

(D) In determining imminent danger to the applicant, the court may consider the following:

(1) the use or threatened use of a deadly weapon by the respondent or pattern of prior conduct by the respondent involving the use of a firearm, as defined in Section 16‑25‑10;

(2) serious injury inflicted by the respondent upon the petitioner or a minor child in the petitioner’s household;

(3) threats by the respondent to seriously injure or murder the petitioner or a minor child in the petitioner’s household; or

(4) threats by the respondent to commit suicide.”

SECTION 7. Section 20‑4‑60 of the 1976 Code, as last amended by Act 251 of 2014, is further amended to read:

“Section 20‑4‑60. (A) ~~Any~~ An order of protection granted ~~under~~ pursuant to this chapter ~~shall be~~ is to protect the petitioner or the abused person ~~or persons~~ on whose behalf the petition was filed and may include:

(1) temporarily enjoining the respondent from abusing, threatening to abuse, or molesting the petitioner or the person ~~or persons~~ on whose behalf the petition was filed;

(2) temporarily enjoining the respondent from communicating or attempting to communicate with the petitioner in ~~any~~ a way which ~~would violate~~ violates the provisions of this chapter and temporarily enjoining the respondent from entering or attempting to enter the petitioner's place of residence, employment, education, or other location as the court may order.

(B) Every order of protection issued pursuant to this chapter ~~shall~~ must conspicuously bear the following language:

(1) ‘Violation of this order is a criminal offense punishable by thirty days in jail or a fine of two hundred dollars or may constitute contempt of court punishable by up to one year in jail and/or a fine not to exceed fifteen hundred dollars.’; and

(2) ‘Pursuant to Section 16‑25‑125 of the South Carolina Code of Laws, it is unlawful for a person who has been charged with or convicted of criminal domestic violence or criminal domestic violence of a high and aggravated nature, who is subject to an order of protection, or who is subject to a restraining order, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person's household member resides or the domestic violence shelter's administrative offices. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both’.

(C) When the court has, after a hearing for ~~any~~ an order of protection, issued an order of protection, it may, in addition:

(1) award temporary custody and temporary visitation rights with regard to minor children living in the home over whom the parties have custody;

(2) direct the respondent to pay temporary financial support for the petitioner and minor child unless the respondent has no duty to support the petitioner or minor child;

(3) when the respondent has a legal duty to support the petitioner or minor children living in the household and the household's residence is jointly leased or owned by the parties or the respondent is the sole owner or lessee, grant temporary possession to the petitioner of the residence to the exclusion of the respondent;

(4) prohibit the transferring, destruction, encumbering, or otherwise disposing of real or personal property mutually owned or leased by the parties or in which one party claims an equitable interest, except when in the ordinary course of business;

(5) provide for temporary possession of the personal property, including pet animals, of the parties and order assistance from law enforcement officers in removing personal property of the petitioner if the respondent’s eviction has not been ordered;

(6) award costs and attorney's fees to either party;

(7) award ~~any~~ other relief authorized by Section 63‑3‑530~~;~~. ~~provided,~~ However, the court must have due regard for ~~any~~ prior family court orders issued in an action between the parties.

(D) No protective order issued pursuant to this chapter may affect, in any manner, ~~affect~~ the title to real property except as provided pursuant to the provisions of subsection (F).

(E) No mutual order of protection may be granted unless the court sets forth findings of fact necessitating the mutual order or unless both parties consent to a mutual order.

(F) If an order of protection is issued pursuant to this chapter and the court finds that there is an imminent danger to the petitioner by the respondent, the court may order the respondent to surrender all firearms, as defined in Section 16‑25‑10, to the county sheriff as a condition of the order of protection. The sheriff shall store the firearms for the duration of the order.

(G) In determining imminent danger to the applicant, the court may consider the following:

(1) the use or threatened use of a deadly weapon by the respondent or pattern of prior conduct by the respondent involving the use of firearms, as defined in Section 16‑25‑10;

(2) serious injury inflicted by the respondent upon the petitioner or a minor child in the petitioner’s household;

(3) threats by the respondent to seriously injure or murder the petitioner or a minor child in the petitioner’s household; or

(4) threats by the respondent to commit suicide.”

SECTION 8. 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 9. 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 10. This act takes effect upon approval by the Governor.

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