~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

January 27, 2016

**S. 647**

Introduced by Senators Malloy, Kimpson, Johnson, Nicholson and Allen

S. Printed 1/27/16--S.

Read the first time April 14, 2015.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 647) to amend Section 16‑5‑50, Code of Laws of South Carolina, 1976, relating to the criminal offense of hindering a law enforcement officer, 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, by striking all after the enacting words and inserting:

/ SECTION 1. Section 16‑5‑50 of the 1976 Code is amended to read:

“Section 16‑5‑50. (A)(1) ~~Any~~ A person ~~who~~ shall not:

(a) hinder, prevent, or obstruct ~~any~~ a law enforcement officer or other person charged with the execution of ~~any~~ a warrant or other process issued ~~under the provisions of~~ pursuant to this chapter in arresting ~~any~~ a person for whose apprehension such warrant or ~~other~~ process may have been issued~~,~~;

(b) rescue or attempt to rescue such person from the custody of the officer or person ~~or persons~~ lawfully assisting ~~him~~ the officer~~, as aforesaid,~~;

(c) aid, abet, or assist ~~any~~ a person so arrested, ~~as aforesaid,~~ directly or indirectly, to escape from the custody of the officer or person ~~or persons~~ assisting ~~him~~ the officer~~, as aforesaid,~~; or

(d) harbor or conceal ~~any~~ a person for whose arrest a warrant or other process ~~shall have~~ has been issued, so as to prevent ~~his~~ the person’s discovery and arrest, after notice or knowledge of the ~~fact of the~~ issuing of such warrant or ~~other~~ process~~, shall, on conviction for any such offense, be subject to a fine of~~.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than three thousand dollars or ~~imprisonment~~ imprisoned for not more than three years, or both~~, at the discretion of the court having jurisdiction~~.

(B)(1) If a person is exercising the person’s right to photograph or record a law enforcement officer performing the officer’s duties while the officer is in a public place or public view, or the person is in a private place the person has the right to be, an officer shall not:

(a) intentionally hinder, prevent, or obstruct the person from taking a photograph or making a recording;

(b) detain, arrest, threaten, intimidate, or otherwise harass the person;

(c) search or seize the photograph, recording, or device used to take the photograph or make the recording without the person’s permission or a warrant; or

(d) damage or destroy the photograph, recording, or device used to take the photograph or make the recording.

(2) This subsection does not apply to a person if an officer is in the act of placing the person under arrest or the person is under arrest.

(3) If an officer violates this subsection, the person has a civil cause of action against the officer and the officer’s law enforcement agency.”

SECTION 2. Section 16‑9‑320 of the 1976 Code is amended to read:

“Section 16‑9‑320. (A)(1) It is unlawful for a person knowingly and wilfully to oppose or resist a law enforcement officer in serving, executing, or attempting to serve or execute a legal writ or process or to resist an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not.

(2) A person who violates ~~the provisions of~~ this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not less than five hundred dollars nor more than one thousand dollars or imprisoned not more than one year, or both.

(B)(1) It is unlawful for a person to knowingly and wilfully assault, beat, or wound a law enforcement officer engaged in serving, executing, or attempting to serve or execute a legal writ or process or to assault, beat, or wound an officer when the person is resisting an arrest being made by one whom the person knows or reasonably should know is a law enforcement officer, whether under process or not.

(2) A person who violates ~~the provisions of~~ this subsection is guilty of a felony, and, upon conviction, must be fined not less than one thousand dollars nor more than ten thousand dollars or imprisoned not more than ten years, or both.

(C)(1) If a person is exercising the person’s right to photograph or record a law enforcement officer performing the officer’s duties while the officer is in a public place or public view, or the person is in a private place the person has the right to be, an officer shall not:

(a) intentionally hinder, prevent, or obstruct the person from taking a photograph or making a recording;

(b) detain, arrest, threaten, intimidate, or otherwise harass the person;

(c) search or seize the photograph, recording, or device used to take the photograph or make the recording without the person’s permission or a warrant; or

(d) damage or destroy the photograph, recording, or device used to take the photograph or make the recording.

(2) This subsection does not apply to a person if an officer is in the act of placing the person under arrest or the person is under arrest.

(3) If an officer violates this subsection, the person has a civil cause of action against the officer and the officer’s law enforcement agency.”

SECTION 3. This act takes effect upon approval by the Governor. /

Renumber sections to conform.

Amend title to conform.

Majority favorable. Minority unfavorable.

GERALD MALLOY THOMAS D. CORBIN

For Majority. For Minority.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Fiscal Impact Summary**

There will be minimal additional costs to the general fund that can be absorbed by the Judicial Department. Federal and other funds will not be impacted.

**Explanation of Fiscal Impact**

**State Expenditure**

This bill amends section 65-5-50 to provide the offense of hindering a law enforcement officer does not apply to a person who photographs or records a law enforcement officer performing official duties while the officer is in a public place or the person is in a place the person has the right to be. The Judicial Department anticipates that additional hearings and trials will be held in Common Pleas and Magistrates courts. There is no data available to indicate the number of additional hearings and trials. However, should this bill result in a significant number of additional hearings and trials, it could result in an increased backlog for the Common Pleas and Magistrate courts. Any additional costs to the Magistrate courts would be born by the counties. There will be minimal additional costs to the general fund, but they can be absorbed by the Judicial Department. Federal and other funds will not be impacted.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 16‑5‑50, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CRIMINAL OFFENSE OF HINDERING A LAW ENFORCEMENT OFFICER, SO AS TO PROVIDE THAT SUCH OFFENSE DOES NOT APPLY TO A PERSON WHO PHOTOGRAPHS OR RECORDS A LAW ENFORCEMENT OFFICER PERFORMING THE OFFICER’S OFFICIAL DUTIES WHILE THE OFFICER IS IN A PUBLIC PLACE OR THE PERSON IS IN A PLACE THE PERSON HAS THE RIGHT TO BE.

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

SECTION 1. Section 16‑5‑50 of the 1976 Code is amended to read:

“Section 16‑5‑50. (A) ~~Any~~ A person ~~who~~ shall not:

~~(a)~~(1) hinder, prevent, or obstruct ~~any~~ a law enforcement officer or other person charged with the execution of ~~any~~ a warrant or other process issued ~~under~~ pursuant to ~~the provisions of~~ this chapter in arresting ~~any~~ a person for whose apprehension such warrant or ~~other~~ process may have been issued~~,~~;

~~(b)~~(2) rescue or attempt to rescue such person from the custody of the officer or person ~~or persons~~ lawfully assisting ~~him~~ the officer~~, as aforesaid,~~;

~~(c)~~(3) aid, abet, or assist ~~any~~ a person so arrested, ~~as aforesaid,~~ directly or indirectly, to escape from the custody of the officer or person ~~or persons~~ assisting ~~him~~ the officer~~, as aforesaid,~~; or

~~(d)~~(4) harbor or conceal ~~any~~ a person for whose arrest a warrant or other process ~~shall have~~ has been issued, so as to prevent ~~his~~ the person’s discovery and arrest, after notice or knowledge of the ~~fact of the~~ issuing of such warrant or ~~other~~ process~~, shall, on conviction for any such offense, be subject to a fine of~~.

(B)(1) This section does not apply to a person who photographs or records a law enforcement officer performing the officer’s official duties while the officer is in a public place or the person is in a place the person has the right to be.

(2) The officer shall not:

(a) intentionally hinder, prevent, or obstruct the person from taking a photograph or making a recording;

(b) detain, arrest, threaten, intimidate, or otherwise harass the person;

(c) search or seize the photograph, recording, or device used to take the photograph or make the recording without the person’s permission or a warrant; or

(d) damage or destroy the photograph, recording, or device used to take the photograph or make the recording.

If the officer violates this subitem, the person has a civil cause of action against the officer and the officer’s law enforcement agency.

(C) Except as provided in item (2) of subsection (B), a person who violates this section is guilty of a misdemeanor, and, upon conviction, must be fined not more than three thousand dollars or ~~imprisonment~~ imprisoned for not more than three years, or both~~, at the discretion of the court having jurisdiction~~.”

SECTION 2. This act takes effect upon approval by the Governor.

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