COMMITTEE REPORT

March 27, 2019

**S. 276**

Introduced by Senator Senn

S. Printed 3/27/19--S.

Read the first time January 8, 2019.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 276) to amend Article 5, Chapter 23, Title 16 of the 1976 Code, relating to miscellaneous offenses involving weapons, by adding Section 16-23-540, 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 Section 16-23-540(A), beginning on page 1, line 38 and ending on page 2, line 7, and inserting therein:

/ “Section 16-23-540. (A) It is unlawful for a person to threaten, solicit another to threaten, or conspire to threaten to cause damage, serious bodily injury, or death to others or to cause damage to or destroy a building or other real or personal property by use of a dangerous weapon if the threat is to occur while:

(1) on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post-secondary institution;

(2) in a church, as defined by Section 61-6-120(A)(1);

(3) in any publicly owned building or recreational park areas; or

(4) at a public gathering place. /

Renumber sections to conform.

Amend title to conform.

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 8, 2019**

**State Expenditure**

This bill creates a new offense triable in General Sessions Court. An individual who threatens, conspires, or solicits another to cause damage, serious bodily injury or death to a person, or who causes damage or destruction of a building, real property, or personal property, by use of a deadly weapon and only in certain locations, would violate this new statutory offense. The bill requires that anyone charged with this offense undergo a mental health evaluation, and, if found to be in need of treatment, provides that they may not be prosecuted.

**Judicial Department.** The department reports that this bill creates a new offense and there is no data available upon which to estimate the number of hearings or trials that may be initiated in General Sessions Court as a result of this legislation. However, the department anticipates that any expenditure impact to the general fund, other funds, or federal funds from the increased caseload in General Sessions Court would be managed within existing resources.

**Department of Mental Health.** The bill adds that any person charged with threatening, soliciting, or conspiring to cause injury or harm by use of a dangerous weapon must undergo mental health treatment or counseling by a court-approved mental health professional, mental health facility, or a facility operated by DMH. The department performs intake assessments for new patients at 17 community mental health centers. The intake assessment includes a psychosocial assessment conducted by a mental health counselor, the creation of a plan for outpatient services, and a provisional diagnosis. After the initial intake assessment is competed, a psychiatrist conducts a comprehensive psychiatric assessment. Each 60 minute assessment performed by a mental health counselor results in $178 in expenditures for DMH. A comprehensive psychiatric medical assessment performed by a psychiatrist results in $640 of expenditures. DMH anticipates the need for additional FTE psychiatrists as a result of this bill, further increasing general fund expenditures by $237,000 for each additional psychiatrist required. The number of additional assessments and FTEs needed cannot be estimated because the number of additional patients to be assessed by DMH is unknown at this time. As such, this bill will result in an undetermined increase of general fund expenditures for DMH.

**Commission on Prosecution Coordination.** A determination of the bill’s impact is pending, as the agency is still reviewing the bill.

**Commission on Indigent Defense.** The agency reports the implementation of this bill will be handled by the agency’s existing personnel and not result in any expenditure to the general fund, other funds, or federal funds.

**Department of Corrections.** This bill creates new offenses for threatening to damage or actually damaging churches, public buildings, recreational parks, and public gathering places or causing serious bodily injury or death to a person who is located on these grounds. Individuals accused of these violations must be administered a mental health evaluation as a condition of bond. If the mental health evaluation reveals that the person needs mental health treatment or counseling, then the solicitor may refer him to a mental health court, or the court may require him to undergo mental health treatment or counseling. However, if a person undergoes a mental health evaluation and is determined to not need mental health treatment or counseling they will be convicted as follows for violating Section 16-23-540(A) of this bill:

guilty of a misdemeanor and, upon conviction, must be fined not more than $2,000, imprisoned not more than 2 years, or both; or

if the violation results in damage to or destruction of a building or other real or personal property, is guilty of a misdemeanor and, upon conviction, must be fined not more than $3,000, imprisoned not more than 3 years, or both; or

if the violation results in the serious bodily injury or death of another person, is guilty of a felony and, upon conviction, must be fined not more than $5,000, imprisoned not more than 5 years, or both.

The department reports that it currently is admitting some types of these offenders for violations of existing statutes. During FY 2018-19, 49 inmates were admitted to state correctional facilities for offenses related to damages to public property or malicious injury to property, and 9 inmates were admitted for bomb threat offenses. As the number of inmates admitted for similar offenses is small, the department expects to manage any increase in general fund, other fund, and federal fund expenditures using current resources.

**State Reve**n**ue**

Because the bill creates new felony and misdemeanor offenses for which there is limited historical data, the revenue impact on the general fund and other funds is undetermined. Existing law distributes revenue generated as assessments and surcharges imposed on such convictions among the general fund, specified state agencies and programs, and the local jurisdiction in which judgment is rendered.

**Local Expenditure**

Because the bill creates new criminal offenses, data is not available to project a change in law enforcement activity or detention in local facilities. However, any increase resulting specifically from this bill is expected to be managed within existing resources.

**Local Revenue**

Because the bill creates new felony and misdemeanor offenses for which there is limited historical data, the revenue impact on magistrate or municipal courts is undetermined. Existing law provides for the retention of part or all of the revenue generated from fines, assessments, and surcharges by the local jurisdiction processing the case.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND ARTICLE 5, CHAPTER 23, TITLE 16 OF THE 1976 CODE, RELATING TO MISCELLANEOUS OFFENSES INVOLVING WEAPONS, BY ADDING SECTION 16-23-540, TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO THREATEN, SOLICIT ANOTHER TO THREATEN, OR CONSPIRE TO THREATEN TO CAUSE DAMAGE, SERIOUS BODILY INJURY, OR DEATH OR TO CAUSE DAMAGE TO OR DESTROY A BUILDING OR OTHER REAL OR PERSONAL PROPERTY BY USE OF A DANGEROUS WEAPON ON ANY PREMISES OR PROPERTY OWNED, OPERATED, OR CONTROLLED BY A PRIVATE OR PUBLIC SCHOOL, COLLEGE, UNIVERSITY, TECHNICAL COLLEGE, OR OTHER POST‑SECONDARY INSTITUTION, IN A CHURCH, IN ANY PUBLICLY OWNED BUILDING OR RECREATIONAL PARK AREAS, OR IN A PUBLIC GATHERING PLACE; TO PROVIDE THAT A PERSON WHO IS CHARGED WITH A VIOLATION MUST UNDERGO A MENTAL HEALTH EVALUATION AND, IF NECESSARY, MENTAL HEALTH TREATMENT OR COUNSELING; AND TO PROVIDE FOR PENALTIES.

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

SECTION 1. Article 5, Chapter 23, Title 16 of the 1976 Code is amended by adding:

“Section 16‑23‑540. (A) It is unlawful for a person to threaten, solicit another to threaten, or conspire to threaten to cause damage, serious bodily injury, or death to another person or to cause damage to or destroy a building or other real or personal property by use of a dangerous weapon:

(1) on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post‑secondary institution;

(2) in a church, as defined by Section 61-6-120(A)(1);

(3) in any publicly owned building or recreational park areas; or

(4) public gathering place.

(B)(1) A person who is charged with violating subsection (A) shall, as a condition of his bond, undergo a mental health evaluation. If the mental health evaluation reveals that the person needs mental health treatment or counseling, then the solicitor may refer him to a mental health court or the court shall require him to undergo mental health treatment or counseling by a court-approved mental health professional, mental health facility, or facility operated by the State Department of Mental Health.

(2) Mental health treatment or counseling pursuant to item (1) is all that may be imposed upon a person referred by the solicitor to a mental health court or required by the court to undergo mental health treatment or counseling.

(C) A person who violates subsection (A) and who undergoes a mental health evaluation and it is determined that the person does not need mental health treatment or counseling:

(1) is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars, imprisoned not more than two years, or both;

(2) if the violation results in damage to or destruction of a building or other real or personal property, is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars, imprisoned not more than three years, or both; or

(3) if the violation results in the serious bodily injury or death of another person, is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars, imprisoned not more than five years, or both.

(D) Nothing contained in this section may be construed to repeal, replace, or preclude application of any other criminal statute.”

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

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