~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 5, 2021

**S. 224**

Introduced by Senators Shealy, McLeod, Hutto, Jackson, McElveen, Matthews and Adams

S. Printed 5/5/21--S.

Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 224) to amend Sections 16-15-90 and 16-15-100 of the 1976 Code, relating to prostitution, to increase the penalties for solicitation, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

LUKE A. RANKIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**State Expenditure**

This bill revises provisions related to offenses involving prostitution and establishing or maintaining a brothel. The bill creates the misdemeanor offense of prostitution or exposing indecently the private person for the purpose of prostitution or other indecency, both of which are punishable by a fine of not more than $200, imprisonment for not more than 30 days, or both for a first offense; a fine of not more than $1,000, imprisonment for not more than six months, or both for a second offense; and a fine of not more than $3,000, imprisonment for not more than one year, or both for a third or subsequent offense. In addition, the bill creates an affirmative defense for a defendant who was a victim of trafficking in persons when the offense was committed.

The bill also adds the following offenses to the list of existing unlawful acts related to prostitution:

 Residing in, entering, or remaining in a place, structure, building, vehicle, trailer, or conveyance for the purpose of lewdness, assignation, or prostitution;

 Keeping or establishing a house of ill fame, brothel, or bawdyhouse;

 Receiving a person for the purpose of lewdness, assignation, or prostitution into a vehicle, conveyance, trailer, place, structure, or building;

 Permitting a person to remain for the purpose of lewdness, assignation, or prostitution in a vehicle, conveyance, trailer, place, structure, or building;

 Directing, taking, or transporting, offering or agreeing to take or transport, or aiding or assisting in transporting a person to a vehicle, conveyance, trailer, place, structure, or building, or to another person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation; and

 Leasing, renting, or contracting to lease or rent a vehicle, conveyance, trailer, place, structure, building, or part thereof believing or having reasonable cause to believe that it is intended to be used for any of the above acts.

Persons who violate any of the above provisions or who perform other unlawful acts of prostitution outlined in existing provisions are guilty of a misdemeanor offense punishable by a fine of not less than $250 nor more than $1,000, imprisonment for not more than 30 days, or both for a first offense (which may be tried in magistrate or municipal court); a fine of not less than $500 nor more than $3,000, imprisonment for not more than six months, or both for a second offense; and a fine of not less than $1,500 nor more than $5,000, imprisonment for not more than one year, or both for a third or subsequent offense. The bill also adds to the noted violations an aggravating factor where a prostitute has been adjudicated or meets the definition of being severely or profoundly mentally disabled beyond a reasonable doubt; this renders the offense a felony punishable by a fine of not less than $1,500 nor more than $5,000, imprisonment for not more than two years, or both.

The bill also repeals the prior penalty structure, which was as follows:

 First offense – a fine of not more than $200 or confinement in prison for a period of not more than 30 days;

 Second offense – a fine of not more than $1,000 or imprisonment for not more than six months, or both;

 Third or subsequent offense – a fine of not more than $3,000 or imprisonment for not less than one year, or both.

The bill, which takes effect upon approval by the Governor, also adds a severability clause.

**Judicial Department.**  The department reports that the bill will impact general sessions, magistrate, and municipal courts. As the bill amends elements and structures of the offenses and creates a new offense, there is no data with which to estimate the number of filings, hearings, or trials that may result. However, in FY 2019-20, there were 984 filings for prostitution-related offenses:

CDR Code - Description Total Filings in FY 19-20

0323 - Sex / Prostitution - 2nd offense 16

0324 - Sex / Prostitution, further acts - 3rd or sub. Offense 1

0640 - Sex / Prostitution - 1st offense 951

0744 - Sex / Prostitution - 3rd or sub. Offense 6

1208 - Sex / Prostitution, further acts - 1st offense 8

1209 - Sex / Prostitution, further acts - 2nd offense 2

Implementation of the bill may increase the number of hearings held in general sessions courts, which may lead to an increased backlog for the Circuit Court as a whole. The department intends to use existing general fund resources to manage any increase in caseloads.

**Local Revenue**

The bill increases the penalties for solicitation of prostitution, establishing or keeping a brothel, or causing or inducing another person to participate in prostitution. The increase in local revenue from the higher fines proposed by the bill is dependent upon the number of violations. Because the bill increases the current fines for which there is no historical data, the increase in revenue for local governments is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTIONS 16-15-90 AND 16-15-100 OF THE 1976 CODE, RELATING TO PROSTITUTION, TO INCREASE THE PENALTIES FOR SOLICITATION OF PROSTITUTION, ESTABLISHING OR KEEPING A BROTHEL OR HOUSE OF PROSTITUTION, OR CAUSING OR INDUCING ANOTHER TO PARTICIPATE IN PROSTITUTION, TO ESTABLISH THE AFFIRMATIVE DEFENSE OF BEING A VICTIM OF HUMAN TRAFFICKING, AND TO INCREASE THE PENALTIES FOR SOLICITING, CAUSING, OR INDUCING ANOTHER FOR OR INTO PROSTITUTION IF THE PROSTITUTE HAS A MENTAL DISABILITY; AND TO REPEAL SECTION 16-15-110 OF THE 1976 CODE, RELATING TO PROSTITUTION VIOLATIONS.

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

SECTION 1. Section 16‑15‑90 of the 1976 Code is amended to read:

“Section 16‑15‑90. (A) It shall be unlawful to:

(1) ~~Engage~~ engage in prostitution or offer oneself for the purpose of prostitution; or

(2) ~~Aid or abet prostitution knowingly;~~

~~(3)~~ ~~Procure or solicit for the purpose of prostitution;~~

~~(4)~~ ~~Expose~~ expose indecently the private person for the purpose of prostitution or other indecency~~;~~

~~(5)~~ ~~Reside in, enter or remain in any place, structure, building, vehicle, trailer or conveyance for the purpose of lewdness, assignation or prostitution;~~

~~(6)~~ ~~Keep or set up a house of ill fame, brothel or bawdyhouse;~~

~~(7)~~ ~~Receive any person for purposes of lewdness, assignation or prostitution into any vehicle, conveyance, trailer, place, structure or building;~~

~~(8)~~ ~~Permit any person to remain for the purpose of lewdness, assignation or prostitution in any vehicle, conveyance, trailer, place, structure or building;~~

~~(9)~~ ~~Direct, take or transport, offer or agree to take or transport or aid or assist in transporting any person to any vehicle, conveyance, trailer, place, structure or building or to any other person with knowledge or having reasonable cause to believe that the purpose of such directing, taking or transporting is prostitution, lewdness or assignation;~~

~~(10) Lease or rent or contract to lease or rent any vehicle, conveyance, trailer, place, structure or building or part thereof believing or having reasonable cause to believe that it is intended to be used for any of the purposes herein prohibited; or~~

~~(11)~~ ~~Aid, abet, or participate knowingly in the doing of any of the acts herein prohibited~~.

(B) A person who violates this section is guilty of a misdemeanor and, upon conviction:

(1) for a first offense, must be fined not more than two hundred dollars, imprisoned not more than thirty days, or both;

(2) for a second offense, must be fined not more than one thousand dollars, imprisoned not more than six months, or both; and

(3) for a third or subsequent offense, must be fined not more than three thousand dollars, imprisoned not more than one year, or both.

(C) It is an affirmative defense to a prosecution for a violation of this section subject to the requirements of Section 16‑3‑2020(F)if, during the commission of the offense, the defendant was a victim of trafficking in persons as defined by Section 16‑3‑2010(9).

(D) Notwithstanding the other provisions of this section, a minor under the age of eighteen at the time of an incident may not be prosecuted pursuant to this section.”

SECTION 2. Section 16‑15‑100 of the 1976 Code is amended to read:

“Section 16‑15‑100. (A) It shall ~~further~~ be unlawful to:

(1) procure or solicit a person for the purpose of prostitution;

~~(1)~~(2) ~~Procure~~ procure a ~~female~~ person to be an inmate for a house of prostitution;

~~(2)~~(3) ~~Cause~~ cause, induce, persuade, or encourage by promise~~, threat, violence, or by any scheme or device~~ a ~~female~~ person to become a prostitute or to remain an inmate of a house of prostitution;

~~(3)~~(4) ~~Induce~~ induce, persuade, or encourage a ~~female~~ person to come into or leave this State for the purpose of prostitution or to become an inmate in a house of prostitution;

~~(4)~~(5) ~~Receive~~ receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure ~~any female~~ a person to become a prostitute or an inmate in a house of prostitution;

~~(5)~~(6) ~~Accept~~ accept or receive knowingly any money or other thing of value without consideration from a prostitute; ~~or~~

(7) reside in, enter, or remain in a place, structure, building, vehicle, trailer, or conveyance for the purpose of lewdness, assignation, or prostitution;

(8) keep or set up a house of ill fame, brothel, or bawdyhouse;

(9) receive a person for the purpose of lewdness, assignation, or prostitution into a vehicle, conveyance, trailer, place, structure, or building;

(10) permit a person to remain for the purpose of lewdness, assignation, or prostitution in a vehicle, conveyance, trailer, place, structure, or building;

(11) direct, take, or transport, offer or agree to take or transport, or aid or assist in transporting a person to a vehicle, conveyance, trailer, place, structure, or building, or to another person with knowledge or having reasonable cause to believe that the purpose of such directing, taking, or transporting is prostitution, lewdness, or assignation;

(12) lease, rent, or contract to lease or rent a vehicle, conveyance, trailer, place, structure, building, or part thereof believing or having reasonable cause to believe that it is intended to be used for any of the purposes prohibited by this section; or

~~(6)~~(13) ~~Aid~~ knowingly aid, abet, or participate ~~knowingly~~ in the doing of any of the acts ~~herein~~ prohibited by this section.

(B)(1) A person who violates a provision of this section is guilty of a misdemeanor and, upon conviction:

(a) for a first offense, must be fined not less than two hundred fifty dollars and not more than one thousand dollars, imprisoned not more than thirty days, or both. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, a first offense charged for this item may be tried in magistrate or municipal court;

(b) for a second offense, must be fined not less than five hundred dollars and not more than three thousand dollars, imprisoned not more than six months, or both; and

(c) for a third or subsequent offense, must be fined not less than one thousand five hundred dollars and not more than five thousand dollars, imprisoned not more than one year, or both.

(2) A person who violates a provision of this section where the prostitute has been adjudicated or meets the definition to be found severely or profoundly mentally disabled beyond a reasonable doubt is guilty of a felony and, upon conviction, must be fined not less than one thousand five hundred dollars and not more than five thousand dollars, imprisoned not more than two years, or both.”

SECTION 3. Section 16‑15‑110 of the 1976 Code is repealed.

SECTION 4. 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 5. 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 6. This act takes effect upon approval by the Governor.

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