South Carolina Law Enforcement Legislative Agenda

PRESENTED BY

Solicitors, Sheriffs, SLED, and the Attorney General

THE 2013 CRIMINAL JUSTICE REFORM PACKAGE

SOUTH CAROLINA'S LAW ENFORCEMENT LEGISLATIVE AGENDA

1. Life Without Parole (16-3-20) McCoy, et al, to re-file H.4919 (2012)
H. 4919 (2012) passed the House last yea, and will be re-filed by Rep. McCoy. It amends the murder statute (16-3-20) to mandate Life Without Parole for murderers convicted of both murder and a separate jury finding of an aggravating circumstance. This bill gives prosecution the ability to seek Life Without Parole without seeking the Death Penalty. A case study comes from Solicitor Pascoe and the Orangeburg Shaquan Duley Murder Case
Status: McCoy, et al, to re-file
Bill Text: House (pg 3) **Summary** (pg 5)

2. Equalization of Peremptory Jury Strikes (14-7-1110) H. 3188 - Pope
South Carolina is one of five states without equal strikes. Allows prosecutors and the defense an equal number of jury strikes regardless of crime or number of defendants. Previously, a defendant being tried alone had twice as many jury strikes as the prosecution for crimes such as murder, armed robbery and criminal sexual conduct. By equalizing strikes, the defense would also net more strikes for crimes such as drug trafficking, attempted murder, and assault and battery of a high and aggravated nature.
Status: Referred to House Judiciary Committee
Bill Text: House (pg 6) **Summary** (pg 8)

3. Use of Testimony (19-11-50) McCoy, et al, to re-file H. 4915 (2012)
H. 4915 (2012) passed the House last year and will be re-filed by Rep. McCoy. This bill repeals 19-11-50, which prohibits use of potentially incriminating, recorded testimony from another trial against a defendant. In a 2008 Death Penalty Case: defendant gave detailed descriptions of how he killed two victims. At the second trial, prosecution was not allowed to introduce the previous testimony because of 19-11-50.
Status: McCoy, et al, to re-file
Bill Text: House (pg 9) **Summary** (pg 10)

4. **Self Authenticating Business Records (902-11/12)** H. 3234 - Quinn
This bill gives SC prosecutors the same ability as federal prosecutors. It also saves taxpayers money and as a matter of judicial economy allows affidavits/video testimony to validate Yahoo, Facebook, and other similar website documents. Currently**,** experts have to be flown in at great expense from California to authenticate / validate a website document.
Status: Referred to House Judiciary Committee
Bill Text: House (pg 11)

5. Internet Sweepstakes (61-12-180) H. 3025 -Henderson ; S. 3 - Martin
This bill clarifies the existing internet sweepstakes statute and eliminates potential misinterpretation.
Status: S.3 received second reading in Senate with a vote of 40-2 on 1/15/13.
Bill Text: House (pg 12); Senate (pg 13)

6. Mail & Wire Fraud McCoy, et al, to sponsor
Develops a "Mail and Wire Fraud" state statute based on Illinois legislation, and is similar to Florida, Illinois, Mississippi, and federal statutes.
Status: McCoy, et al, to re-file
Bill Text: House (pg 15)

7. **Attempted Murder Statute** H. 3064 - McCoy
Streamlines the attempted murder statute to mirror the definition of murder (16-3-10) by removing the words "intent to kill." Currently, law enforcement and prosecutors must determine what was in the mind of a defendant.
Status: Referred to House Judiciary Committee
Bill Text: House (pg 17) **Summary** (pg 18)

8. Assault and Battery McCoy, et al, to re-file H.4920 (2012)
Addresses issues that have arisen in the assault and battery statute (16-3-600) by redefining "moderate bodily injury," and including injury to another person if accomplished by the "use of a deadly weapon."
Status: McCoy, et al, to re-file
Bill Text: House (pg 19)

9. Bond Issues (17-15-55) H. 3051 – Gilliard and Limehouse ; S. 19 - Ford
Additional bond reforms allow for the revocation of bond for repeat violent offenders.
Status: Referred to House Judiciary
Bill Text: House (pg 21) ; Senate (pg 23)

10. Multi-Jurisdictional Agreements (23-1-210) Tallon, Patrick, et al to re-file H. 5030 (2012)
This bill enables multi-jurisdictional drug task forces to better operate across the state.
Status: Tallon, Patrick, et al to re-file
Bill Text: House (pg 25)

1. **LIFE WITHOUT PAROLE** – AMENDS THE MURDER STATUTE (16-3-20) TO MANDATE LIFE WITHOUT PAROLE FOR MURDERERS CONVICTED OF BOTH MURDER AND A SEPARATE JURY FINDING OF AN AGGRAVATING CIRCUMSTANCE.

REFILE H. 4919 (2012)
SPONSOR: MCCOY
CO-SPONSORS: HARRELL, HIXON, MURPHY, PATRICK, POPE

A BILL TO AMEND SECTION 16-3-20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PUNISHMENT AND SENTENCING FOR MURDER, SO AS TO PROVIDE FOR MANDATORY LIFE IMPRISONMENT WHEN THE STATE SEEKS A LIFE SENTENCE FOR A MURDER COMMITTED WITH CERTAIN OTHER DESIGNATED OFFENSES OR UNDER CERTAIN FURTHER DELINEATED CIRCUMSTANCES.

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

SECTION 1. A. Section 16-3-20(A) of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

"(A)(1) A person who is convicted of or pleads guilty to murder must be punished by death, or by a mandatory minimum term of imprisonment for thirty years to life.

(2) If the State seeks a life sentence pursuant to subsection (F) and a defendant is convicted pursuant to that subsection, the defendant must be sentenced to life imprisonment as defined in this subsection.

(3) If the State seeks the death penalty and a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (B) and (C), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment.

For purposes of this section, 'life' or 'life imprisonment' means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. In cases where the defendant is eligible for parole, the judge must charge the applicable parole eligibility statute. No person sentenced to life imprisonment pursuant to this section is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. No person sentenced to a mandatory minimum term of imprisonment for thirty years to life pursuant to this section is eligible for parole or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other

credits that would reduce the mandatory minimum term of imprisonment for thirty years to life required by this section. Under no circumstances may a female who is pregnant be executed so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death to life imprisonment under the provisions of Section 14, Article IV of the Constitution of South Carolina, 1895, the commutee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection."

B. Section 16-3-20 of the 1976 Code, as last amended by Act 289 of 2010, is further amended by adding a new subsection at the end to read:

"(F) Notwithstanding another provision of law, the State may seek a mandatory sentence of life imprisonment pursuant to the provisions of this subsection. The State shall give written notice to the defendant ten days prior to trial of its intention to seek sentencing pursuant to this subsection. If the State seeks a mandatory sentence of life imprisonment pursuant to this subsection, the defendant must be sentenced to life imprisonment if he is convicted and the conviction meets the following criteria, the defendant is convicted of:

(1) murder and also is found guilty of one or more of the following accompanying crimes:
(a) criminal sexual conduct in any degree;
(b) kidnapping;
(c) burglary in any degree; or
(d) robbery while armed with a deadly weapon;
(2) two or more murders by one act or pursuant to one scheme or course of conduct; or
(3) murder and the victim is a child eleven years of age or under."

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.

Life Without Parole Summary:

Currently, a defendant convicted of murder will face a sentencing *range* of 30 years to life and there are only two possible scenarios under which a sentence of life without parole (LWOP) would be mandatory for a defendant:

1. If the defendant has two or more "serious" prior convictions or one or more "most serious"[1] prior convictions (also known as the two strikes/three strikes law, which is found in S.C. Code Section 17-25-45 (A)); and

2. If the State seeks the death penalty and the jury returns with a recommendation of a life sentence instead of the death penalty (in this scenario, the life sentence is without parole under S.C. Code Section 16-3-20(A)).

The LWOP provision sought by the Solicitors would provide a means by which the Solicitor has the option of filing a notice of sentence enhancement for murders committed in conjunction with a statutorily defined aggravating circumstance. A conviction for such a murder, along with a separate jury finding of an aggravating circumstance, would mandate a sentence of life without parole (LWOP).

BACK TO TOP

2. **EQUALIZATION OF PEREMPTORY JURY STRIKES** - ALLOWS PROSECUTORS AND THE DEFENSE AN EQUAL NUMBER OF JURY STRIKES REGARDLESS OF CRIME OR NUMBER OF DEFENDANTS BEING TRIED. A DEFENDANT BEING TRIED ALONE HAD TWICE AS MANY JURY STRIKES AS THE PROSECUTION FOR CRIMES SUCH AS MURDER, ARMED ROBBERY, CRIMINAL SEXUAL CONDUCT, MANSLAUGHTER, ARSON, GRAND LARCENY AND OTHERS.

H. 3188
SPONSOR: POPE

A BILL

TO AMEND SECTIONS 14-7-1110, AS AMENDED, AND 14-7-1120, CODE OF LAWS OF SOUTH CAROLINA, 1976, BOTH RELATING TO PEREMPTORY CHALLENGES, SO AS TO EQUALIZE THE NUMBER OF PEREMPTORY CHALLENGES FOR THE DEFENDANT AND THE STATE IN A CRIMINAL CASE.

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

SECTION 1. Section 14-7-1110 of the 1976 Code, as last amended by Act 10 of 1987, is further amended to read:

"Section 14-7-1110. Any A person who is arraigned tried for the crime of murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, or breach of trust when it is punishable as for grand larceny, perjury, or forgery a Class A, B, or C felony, or a crime that carries a maximum penalty of twenty years or more, is entitled to ten peremptory challenges not exceeding ten, and the State in these cases is entitled to ten peremptory challenges not exceeding five. Any A person who is indicted tried for any a crime or offense other than those enumerated above has the right to is entitled to five peremptory challenges not exceeding five, and the State in these cases is entitled to five peremptory challenges not exceeding five. No right to stand aside jurors is allowed to the State in any case whatsoever. In no case where When there is more than one defendant jointly tried are for a Class A, B, or C felony, or a crime that carries a maximum penalty of twenty years or more, no more than twenty peremptory challenges are allowed in all to the defendants, and in misdemeanors when there is more than one defendant jointly tried no more than ten peremptory challenges are allowed in all to the defendants and no more than twenty peremptory challenges are allowed to the State. In felonies all other cases when there is more than one defendant is jointly tried, no more than ten peremptory challenges are allowed in all to the defendants, and no more than ten peremptory challenges are allowed to the State has ten challenges."

SECTION 2. Section 14-7-1120 of the 1976 Code is amended to read:

"Section 14-7-1120. In criminal cases the prosecution is entitled to one and the defendant to two one peremptory challenges challenge for each alternate juror called under pursuant to the provisions of Section 14-7-320 and in civil cases, each party shall have one strike for each alternate juror."

SECTION 3. 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 4. This act takes effect upon approval by the Governor.

BACK TO TOP

Equalization of Peremptory Jury Strikes

Currently, South Carolina[2] law allows a defendant tried alone to have twice as many peremptory[3] strikes for certain crimes as the prosecution. The crimes listed only allow for the prosecution to exercise five peremptory strikes while allowing the defendant to exercise 10 strikes: Murder, Manslaughter, Burglary, Arson, Criminal Sexual Conduct, Armed Robbery, Grand Larceny, and Breach of Trust more than $2,000, Perjury, and Forgery.

In crimes other than those listed above, when a single defendant is being tried, the prosecution is allowed five strikes and the defendant is allowed five strikes.

When multiple defendants are jointly tried for a felony offense, the defendants are jointly entitled to no more than 20 strikes total and the state to 10 strikes. When multiple defendants are tried for a misdemeanor, the defendants are jointly entitled to no more than 10 strikes total and the state to five strikes.

Additionally, South Carolina law[4] only allows the prosecution one peremptory strike for each alternate juror called while allowing the defendant two strikes.

The Solicitors seek to amend the current law so that the prosecution and defendant(s) receive equal strikes regardless of the charge or the number of defendants being tried.

As seen in the "Allocation of Peremptory Strikes in the U.S." chart that follows, there are only five states that still allow a defendant to receive more peremptory strikes than the prosecution in ordinary felony cases and only seven states in murder/death penalty cases.

Back to top

[2] "Section 14-7-1110. Peremptory challenges in criminal cases. Any person who is arraigned for the crime of murder, manslaughter, burglary, arson, criminal sexual conduct, armed robbery, grand larceny, or breach of trust when it is punishable as for grand larceny, perjury, or forgery is entitled to peremptory challenges not exceeding ten, and the State in these cases is entitled to peremptory challenges not exceeding five. Any person who is indicted for any crime or offense other than those enumerated above has the right to peremptory challenges not exceeding five, and the State in these cases is entitled to peremptory challenges not exceeding five. No right to stand aside jurors is allowed to the State in any case whatsoever. In no case where there is more than one defendant jointly tried are more than twenty peremptory challenges allowed in all to the defendants, and in misdemeanors when there is more than one defendant jointly tried no more than ten peremptory challenges are allowed in all to the defendants. In felonies when there is more than one defendant jointly tried the State has ten challenges."

[3] Peremptory jury strikes are those strikes that can be exercised without being required to give a reason for the strike. However, the strikes cannot be used on the basis of race or gender.

[4] "Section 14-7-1120. Challenges and strikes of alternate jurors. In criminal cases the prosecution is entitled to one and the defendant to two peremptory challenges for each alternate juror called under the provisions of Section 14-7-320 and in civil cases, each party shall have one strike for each alternate juror."

3. **USE OF TESTIMONY (19-11-50)** - REPEAL OF 19-11-50, WHICH CURRENTLY DEPRIVES THE STATE FROM USING POTENTIALLY INCRIMINATING AND POWERFUL EVIDENCE AGAINST A DEFENDANT BY BARRING RECORDED TESTIMONY FROM ANOTHER TRIAL FROM BEING USED. THIS CAME UP IN A 2008 DEATH PENALTY CASE WHERE A DEFENDANT GAVE DETAILED DESCRIPTIONS AT ONE TRIAL OF HOW HE KILLED TWO VICTIMS. AT THE SECOND TRIAL, THE PROSECUTION WAS NOT ALLOWED TO INTRODUCE THE PREVIOUS TESTIMONY BECAUSE OF 19-11-50.

REFILE H. 4915 (2012)

SPONSOR: MCCOY

CO-SPONSORS: HARRELL, HIXON, MURPHY, PATRICK, AND POPE

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY REPEALING SECTION 19-11-50 RELATING TO THE PROHIBITION AGAINST THE TESTIMONY OF A DEFENDANT BEING USED AGAINST HIM IN ANOTHER CRIMINAL CASE.

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

SECTION 1. Section 19-11-50 of the 1976 Code is repealed.

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.

BACK TO TOP

Use of Testimony Summary

Repeal of S.C. Code Section 19-11-50, which Limits the Use of a Defendant's Testimony

Solicitors seek to repeal S.C. Code Section 19-11-50 whose language appears below.

> ***Section 19-11-50. Use of criminal defendant's testimony.***
> *The testimony of a defendant in a criminal case shall not be afterwards used against the defendant in any other criminal case, except upon an indictment for perjury founded on that testimony.*

This is a statute that does not serve any useful purpose, deprives the State of potentially incriminating and powerful evidence against a defendant, and allows a defendant to testify in a case without fear that the testimony could be used against him in a subsequent trial.

The problem caused by this statute came up in the case of *State v. Rivera*. Raymondeze Rivera met his two victims, Asha Wiley and Kwana Burns, at the Anderson Mall on December 10, 2006. Asha was Christmas shopping and Kwana was working at the Belk counter. Rivera set up a date with Asha Wiley for that evening. He went to her house, had sex with her, strangled her to death, and then cleaned up the body and the crime scene. On December 14, Rivera had plans to meet Kwana Burns. He went to her house, had dinner, and attempted to have sex with her. She resisted his advances, and he strangled her to death in front of her two year old daughter. He then hog-tied Kwana's body, placed the child on top of her dead mother, and left. Rivera was located through his cell phone number, which was obtained from Kwana Burn's house. Rivera's DNA was found at both crime scenes and he gave a detailed written confession to both murders.

In February of 2008, the State tried Rivera for Asha Wiley's murder. During that trial, Rivera took the stand and despite being warned by both his attorney and the Court, gave a detailed, bone chilling account of how he murdered not only Asha Wiley, but also Kwana Burns. He was convicted of Asha Wiley's murder. Rivera's death penalty trial for the murder of Kwana Burns began February 1, 2010. During the penalty phase of that trial, the State attempted to introduce Rivera's testimony from the February 2008 trial for Asha Wiley's murder, which had been recorded by a local TV news station, as character evidence. The trial court granted the defense's objection based on Section 19-11-50, and the recorded testimony was not allowed.

Another example of how this could truly hurt prosecution is a case involving two co-defendants charged with a string of armed robberies. Both are tried on one of the armed robberies and, at the trial, one of the defendants takes full responsibility, admits to all the robberies, and is convicted of that single armed robbery while his co-defendant is acquitted. The defendant's confession to the other armed robberies cannot be used against him in any prosecution for the other armed robberies.

This simply makes no sense. If confessions given outside the presence of counsel are admissible in court, then any sworn testimony in the courtroom, which has the benefit of being counseled, recorded, and judicially informed, should also be admissible. This statute provides a safe harbor for defendants who choose to only acknowledge their crimes in open court. It is not constitutionally required and hinders the State unnecessarily.

BACK TO TOP

4. SELF AUTHENTICATING BUSINESS RECORDS – ADDS SECTIONS 11 AND 12 OF RULE 902 OF THE FEDERAL RULES OF EVIDENCE TO SOUTH CAROLINA'S RULES TO SAVE TAXPAYERS MONEY AND PROVIDE STATE AND LOCAL PROSECUTORS WITH THE SAME ABILITY AS THEIR FEDERAL COUNTERPARTS.

H.3234

SPONSOR: QUINN

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 19-5-520 SO AS TO PROVIDE A PROCEDURE FOR THE CERTIFICATION OF DOMESTIC AND FOREIGN RECORDS OF REGULARLY CONDUCTED ACTIVITY, OR BUSINESS RECORDS, IN ACCORDANCE WITH FEDERAL RULE 902(11) AND (12).

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

SECTION 1. Article 9, Chapter 5, Title 19 of the 1976 Code is amended by adding:

"Section 19-5-520. In addition to those matters provided by Rule 902, Supreme Court Rules of Evidence, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) The original or a copy of a domestic record that meets the requirements of Rule 803(6), as shown by a certification of the custodian or another qualified person that complies with a state statute or a court rule. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record and must make the record and certification available for inspection so that the party has a fair opportunity to challenge them.

(2) In a civil case, the original or a copy of a foreign record that meets the requirements of subsection (1), modified as follows: the certification, rather than complying with a state statute or court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent also must meet the notice requirements of subsection (1)."

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

BACK TO TOP

5. INTERNET SWEEPSTAKES / VIDEO POKER (61-12-180)

H. 3025
SPONSOR: HENDERSON

A BILL

TO AMEND SECTION 61-2-180, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BINGO, RAFFLES, AND OTHER SPECIAL EVENTS, SO AS TO CLARIFY THAT THIS SECTION DOES NOT AUTHORIZE THE USE OF ANY DEVICE PROHIBITED BY SECTION 12-21-2710; AND TO AMEND SECTION 61-4-580, RELATING TO GAME PROMOTIONS ALLOWED BY HOLDERS OF PERMITS AUTHORIZING THE SALE OF BEER OR WINE, SO AS TO CLARIFY THAT THIS ITEM DOES NOT AUTHORIZE THE USE OF ANY DEVICE PROHIBITED BY SECTION 12-21-2710.

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

SECTION 1. Section 61-2-180 of the 1976 Code is amended to read:

"Notwithstanding any other provision of law, a person or organization licensed by the department under this title may hold and advertise special events such as bingo, raffles, and other similar activities intended to raise money for charitable purposes. This section does not affect the requirements for obtaining a bingo license from the department. This section does not authorize the use of any device prohibited by Section 12-21-2710."

SECTION 2. Section 61-4-580(3) of the 1976 Code is amended by adding an undesignated paragraph at the end to read:

"This item does not authorize the use of any device prohibited by Section 12-21-2710."

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

BACK TO TOP

S. 3

SPONSORS: MARTIN, HAYES, FAIR AND CAMPSEN

A BILL

TO AMEND SECTION 61-2-180, SOUTH CAROLINA CODE OF LAWS, 1976, RELATING TO BINGO, RAFFLES, AND OTHER SPECIAL EVENTS, SO AS TO CLARIFY THAT THIS SECTION IS NOT AN EXCEPTION OR LIMITATION TO ACTIVITIES, DEVICES, OR MACHINES THAT ARE PROHIBITED BY SECTION 12-21-2710 OR OTHER PROVISIONS THAT PROHIBIT GAMBLING; AND TO AMEND SECTION 61-4-580, RELATING TO GAME PROMOTIONS ALLOWED BY HOLDERS OF PERMITS AUTHORIZING THE SALE OF BEER OR WINE, SO AS TO CLARIFY THAT THIS SECTION DOES NOT AUTHORIZE THE USE OF AN ACTIVITY, DEVICE, OR MACHINE THAT IS PROHIBITED BY SECTION 12-21-2710 OR BY OTHER PROVISIONS THAT PROHIBIT GAMBLING.

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

SECTION 1. Section 61-2-180 of the 1976 Code is amended to read:

"Section 61-2-180. ~~Notwithstanding any other provision of law, a~~ A person or organization licensed by the department under this title may hold and advertise special events such as bingo~~, raffles, and~~ or other similar activities intended to raise money for charitable purposes. This section does not affect the requirements for obtaining a bingo license from the department. A special event or activity that is authorized pursuant to this section is not an exception or limitation to Section 12-21-2710 or other provisions of the South Carolina Code of Laws in which gambling or games of chance are unlawful and prohibited."

SECTION 2. Section 61-4-580 of the 1976 Code is amended to read:

"Section 61-4-580. No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

(1) sell beer or wine to a person under twenty-one years of age;

(2) sell beer or wine to an intoxicated person;

(3) permit gambling or games of chance except game promotions including contests, games of chance, or sweepstakes in which the elements of chance and prize are present and which comply with the following:

(a) the game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services;

(b) no purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize; ~~and~~

(c) all materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation; and

(d) this subsection is not an exception or limitation to Section 12-21-2710 or other provisions of the South Carolina Code of Laws in which gambling or games of chance are unlawful and prohibited.

(4) permit lewd, immoral, or improper entertainment, conduct, or practices. This includes, but is not limited to, entertainment, conduct, or practices where a person is in a state of undress so as to expose the human male or female genitals, pubic area, or buttocks cavity with less than a full opaque covering;

(5) permit any act, the commission of which tends to create a public nuisance or which constitutes a crime under the laws of this State; or

(6) sell, offer for sale, or possess any beverage or alcoholic liquors the sale or possession of which is prohibited on the licensed premises under the law of this State; or

(7) conduct, operate, organize, promote, advertise, run, or participate in a 'drinking contest' or 'drinking game'. For purposes of this item, 'drinking contest' or 'drinking game' includes, but is not limited to, a contest, game, event, or other endeavor which encourages or promotes the consumption of beer or wine by participants at extraordinary speed or in increased quantities or in more potent form. 'Drinking contest' or 'drinking game' does not include a contest, game, event, or endeavor in which beer or wine is not used or consumed by participants as part of the contest, game, event, or endeavor, but instead is used solely as a reward or prize. Selling beer or wine in the regular course of business is not considered a violation of this section.

(8) A violation of any provision of this section is a ground for the revocation or suspension of the holder's permit."

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

BACK TO TOP

6. **MAIL AND WIRE FRAUD** –DEVELOPS A MAIL AND WIRE FRAUD STATE STATUTE BASED ON STATUES IN PLACE IN ILLINOIS, FLORIDA, MISSISSIPPI AND FEDERAL STATUTES

TO FILE IN HOUSE
SPONSOR: MCCOY
CO-SPONSORS: HARREL, HIXON, MURPHY, PATRICK, AND POPE

A BILL

TO ADD…

§ 16-XX-XXXX **Mail fraud and wire fraud**.

(a) **Mail fraud**. A person commits mail fraud when he or she:

(1) devises or intends to devise any scheme or artifice to defraud, or to obtain money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit obligation, security, or other article, or anything represented to be or intimated or held out to be such a counterfeit or spurious article; and

(2) with the intent to execute such scheme or artifice or to attempt to do so, does, *or hires, counsels, procures, or acts or assists another person who does,* any of the following:

(A) Places in any post office or authorized depository for mail matter within this State any matter or thing to be delivered by the United States Postal Service, according to the direction on the matter or thing.

(B) Deposits or causes to be deposited in this State any matter or thing to be sent or delivered by mail or by private or commercial carrier, according to the direction on the matter or thing.

(C) Takes or receives from mail or from a private or commercial carrier any such matter or thing at the place at which it is directed to be delivered by the person to whom it is addressed.

(D) Knowingly causes any such matter or thing to be delivered by mail or by private or commercial carrier, according to the direction on the matter or thing.

(3) Each separate communication made for the purpose of executing or concealing a scheme or artifice described in this subsection is a separate act and offense of mail fraud.

(b) **Wire fraud**. A person commits wire fraud when he or she:

(1) devises or intends to devise a scheme or artifice to defraud or to obtain money or property by means of false pretenses, representations, or promises; and

(2) for the purpose of executing the scheme or artifice, transmits or causes to be transmitted, *or hires, counsels, procures, or acts or assists another person who transmits or causes to be transmitted,* any writings, signals, pictures, sounds, or electronic or electric impulses by means of wire, radio, or television communications:

(A) from within this State; or

(B) so that the transmission is received by a person within this State; or

(C) so that the transmission may be accessed by a person within this State.

(3) Each separate communication made for the purpose of executing or concealing a scheme or artifice described in this subsection is a separate act and offense of wire fraud.

(c) **Jurisdiction.**

(1) Mail fraud using a government or private carrier occurs in the county in which mail or other matter is deposited with the United States Postal Service or a private commercial carrier for delivery, if deposited with the United States Postal Service or a private or commercial carrier within this State, and the county in which a person within this State receives the mail or other matter from the United States Postal Service or a private or commercial carrier.

(2) Wire fraud occurs in the county from which a transmission is sent, if the transmission is sent from within this State, the county in which a person within this State receives the transmission, and the county in which a person who is within this State is located when the person accesses a transmission.

(d) **Sentence**. *A person who violates the provisions of this section is guilty of a:*

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22-3-540, 22-3-545, 22-3-550, and 14-25-65, if the amount is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars, or imprisoned not more than thirty days;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years if the amount is more than two thousand dollars but less than ten thousand dollars;

(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is ten thousand dollars or more.

BACK TO TOP

7. **ATTEMPTED MURDER STATUTE** - STREAMLINES THE ATTEMPTED MURDER STATUTE TO MIRROR THE DEFINITION OF MURDER UNDER 16-3-10 BY REMOVING THE WORDS "INTENT TO KILL" AND THE BURDEN PLACED ON LAW ENFORCEMENT AND PROSECUTORS TO DETERMINE WHAT WAS ACTUALLY IN THE MIND OF A DEFENDANT.

H. 3064

SPONSOR: MCCOY, ET AL

A BILL

TO AMEND SECTION 16-3-29, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ATTEMPTED MURDER, SO AS TO CREATE THE OFFENSE OF ATTEMPTED MURDER OF A LAW ENFORCEMENT OFFICER AND PROVIDE A MANDATORY MINIMUM PENALTY.

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

SECTION 1. Section 16-3-29 of the 1976 Code, as added by Act 273 of 2010, is amended to read:

"Section 16-3-29. (A) A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this ~~section~~ subsection is guilty of a felony~~,~~ and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this ~~section~~ subsection may not be suspended nor may probation be granted.

(B) A person who violates the provisions of subsection (A) when the victim is a federal, state, or local law enforcement officer is guilty of the felony of attempted murder of a law enforcement officer and, upon conviction, must be imprisoned for a mandatory minimum of fifteen years nor more than thirty years. No part of the mandatory minimum sentence required by this subsection may be suspended nor may probation be granted."

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.

BACK TO TOP

Attempted Murder Summary

In 2010, the Omnibus Crime Bill was passed and the new crime of Attempted Murder was added. Some may interpret the crime of Attempted Murder as having an additional element that is not an element of the crime of Murder. This new element is the specific "intent to kill."

> ***Section 16-3-29.*** *Attempted murder.*
> *A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.*

The addition of the element of a specific intent to kill places an additional burden on law enforcement and prosecutors to determine what was actually in the mind of a defendant. Even under the crime of Murder, a jury is allowed to infer malice from the use of a deadly weapon. A specific "intent" to murder is not required.

Murder is simply defined by statute as the killing of any person with malice aforethought, either express or implied (**Section 16-3-10)**.

BACK TO TOP

8. **ASSAULT AND BATTERY** - ADDRESSES ISSUES THAT HAVE ARISEN IN THE ASSAULT AND BATTERY STATUTE (16-3-600), REGARDING CERTAIN ELEMENTS OF THESE CRIMES, REDEFINING "MODERATE BODILY INJURY."

RE-FILE H. 4920

SPONSOR: MCCOY

CO-SPONSOR: HARRELL, HIXON, MURPHY, PATRICK, AND POPE

PROPOSED AMENDMENT TO 16-3-600
(Assault and Battery Offenses)

Section 16-3-600. Assault and Battery

(A) For purposes of this section:

(1) 'Great bodily injury' means bodily injury which causes a risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

(2) ~~'Moderate bodily injury' means physical injury requiring treatment to an organ system of the body other than the skin, muscles, and connective tissues of the body, except when there is penetration of the skin, muscles, and connective tissues that require surgical repair of a complex nature or when treatment of the injuries requires the use of regional or general anesthesia.~~

'Aggravating Circumstances' are defined as: a great disparity in size, a great disparity in age, a difference in the sexes, a disparity in physical condition of the parties, or serious bodily injury.

(3) 'Private parts' means the genital area or buttocks of a male or female or the breasts of a female.

(B)(1) A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and:

(a) great bodily injury to another person results; or

(b) the act is accomplished by means likely to produce death or great bodily injury.

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than twenty years.

(3) Assault and battery of a high and aggravated nature is a lesser-included offense of attempted murder, as defined in Section 16-3-29.

(C)(1) A person commits the offense of assault and battery in the first degree if the person unlawfully :

(a) injures another person, and the act:

(i) involves nonconsensual touching of the private parts of a person, either under or above clothing, with lewd and lascivious intent; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft; or

(iii) is accomplished by use of a deadly weapon;

(b) offers or attempts to injure another person with the present ability to do so, and the act:

(i) is accomplished by means likely to produce death or great bodily injury; or

(ii) occurred during the commission of a robbery, burglary, kidnapping, or theft.

(iii) is accomplished by use of a deadly weapon;

(2) A person who violates this subsection is guilty of a felony, and, upon conviction, must be imprisoned for not more than ten years.

(3) Assault and battery in the first degree is a lesser-included offense of assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

(D)(1) A person commits the offense of assault and battery in the second degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so, and:

(a) ~~moderate bodily injury to another person results or moderate bodily injury to another person could have resulted;~~ the injury or offer or attempt to injure is accompanied by one or more aggravating circumstances. or

(b) the act involves the nonconsensual touching of the private parts of a person, either under or above clothing.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand five hundred dollars, or imprisoned for not more than three years, or both.

(3) Assault and battery in the second degree is a lesser-included offense of assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

(E)(1) A person commits the offense of assault and battery in the third degree if the person unlawfully injures another person, or offers or attempts to injure another person with the present ability to do so.

(2) A person who violates this subsection is guilty of a misdemeanor, and, upon conviction, must be fined not more than five hundred dollars, or imprisoned for not more than thirty days, or both.

(3) Assault and battery in the third degree is a lesser-included offense of assault and battery in the second degree, as defined in subsection (D)(1), assault and battery in the first degree, as defined in subsection (C)(1), assault and battery of a high and aggravated nature, as defined in subsection (B)(1), and attempted murder, as defined in Section 16-3-29.

BACK TO TOP

9. BOND ISSUES – ENHANCED PENALTIES AND REVOCATION OF BOND FOR REPEAT OFFENDERS OUT ON BOND.

H. 3051
SPONSORS: LIMEHOUSE AND GILLIARD

A BILL

TO AMEND SECTION 17-15-55, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BOND AND THE AUTHORITY OF THE CIRCUIT COURT TO REVOKE BOND UNDER CERTAIN CIRCUMSTANCES, SO AS TO INCLUDE THE COMMISSION OF A SUBSEQUENT VIOLENT CRIME BY A PERSON RELEASED ON BOND IN THE PURVIEW OF THE STATUTE AND TO ADD AN ADDITIONAL PENALTY IF A PERSON COMMITS A GENERAL SESSIONS COURT OFFENSE WHILE ON RELEASE ON BOND.

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

SECTION 1. Section 17-15-55 of the 1976 Code, as added by Act 286 of 2012, is further amended by adding appropriately lettered subsections at the end to read:

"() If a person released on bond pursuant to the provisions of this chapter commits a violent crime, as defined in Section 16-1-60, while released on bond, the bond hearing for the subsequent violent crime must be held in the circuit court. If the court finds probable cause that the person committed the crime or that the person is unlikely to comply with any condition of release, the judge shall revoke all prior bonds. If the court finds probable cause, a rebuttable presumption arises that no condition will assure the person will not pose a danger to the safety of any other person or the community. If the court finds that certain conditions of release on bond will ensure that the person is unlikely to flee or pose a danger to any other person or the community and the person will abide by the terms of release on bond, the judge shall consider bond in accordance with the provisions of this chapter and set or amend bond accordingly.

() If a person is convicted of committing or attempting to commit a subsequent general sessions court offense while on release on bond, the person must be imprisoned for a mandatory minimum of five years, no part of which may be suspended nor probation granted, in addition to the penalty provided for the principal offense. This five year sentence must be served consecutively.

(1) A person sentenced pursuant to the provisions of this subsection is not eligible during the five-year sentence to participate in work release or extended work release nor is the person eligible for parole. A person is not eligible for a reduction in the five-year sentence but may earn good-time credits or work credits during the five-year sentence.

(2) The additional penalty provided in this subsection may not be imposed unless the indictment for the substantive general sessions offense charges as a separate count and pursuant to this subsection that the person was on release on bond when the subsequent general sessions court offense was committed and the person was convicted of the subsequent general sessions court offense at the same time as the offense provided in this subsection.

(3) Written notice of the intention to prosecute pursuant to this subsection must be given to the defendant and the defendant's counsel not less than ten days before trial.

(4) The additional penalty provided in this subsection does not apply when the death penalty or a life sentence without the possibility of parole is imposed for the subsequent general sessions court offense."

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.

BACK TO TOP

S. 19
SPONSOR: FORD

A BILL

TO AMEND SECTION 17-15-55, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO BOND AND THE AUTHORITY OF THE CIRCUIT COURT TO REVOKE BOND UNDER CERTAIN CIRCUMSTANCES, SO AS TO INCLUDE THE COMMISSION OF A SUBSEQUENT VIOLENT CRIME BY A PERSON RELEASED ON BOND IN THE PURVIEW OF THE STATUTE AND TO ADD AN ADDITIONAL PENALTY IF A PERSON COMMITS A GENERAL SESSIONS COURT OFFENSE WHILE ON RELEASE ON BOND.

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

SECTION 1. Section 17-15-55 of the 1976 Code, as added by Act 286 of 2012, is further amended by adding appropriately lettered subsections at the end to read:

"() If a person released on bond pursuant to the provisions of this chapter commits a violent crime, as defined in Section 16-1-60, while released on bond, the bond hearing for the subsequent violent crime must be held in the circuit court. If the court finds probable cause that the person committed the crime or that the person is unlikely to comply with any condition of release, the judge shall revoke all prior bonds. If the court finds probable cause, a rebuttable presumption arises that no condition will assure the person will not pose a danger to the safety of any other person or the community. If the court finds that certain conditions of release on bond will ensure that the person is unlikely to flee or pose a danger to any other person or the community and the person will abide by the terms of release on bond, the judge shall consider bond in accordance with the provisions of this chapter and set or amend bond accordingly.

() If a person is convicted of committing or attempting to commit a subsequent general sessions court offense while on release on bond, the person must be imprisoned for a mandatory minimum of five years, no part of which may be suspended nor probation granted, in addition to the penalty provided for the principal offense. This five year sentence must be served consecutively.

(1) A person sentenced pursuant to the provisions of this subsection is not eligible during the five-year sentence to participate in work release or extended work release nor is the person eligible for parole. A person is not eligible for a reduction in the five-year sentence but may earn good-time credits or work credits during the five-year sentence.

(2) The additional penalty provided in this subsection may not be imposed unless the indictment for the substantive general sessions offense charges as a separate count and pursuant to this subsection that the person was on release on bond when the subsequent general sessions court offense was committed and the person was convicted of the subsequent general sessions court offense at the same time as the offense provided in this subsection.

(3) Written notice of the intention to prosecute pursuant to this subsection must be given to the defendant and the defendant's counsel not less than ten days before trial.

(4) The additional penalty provided in this subsection does not apply when the death penalty or a life sentence without the possibility of parole is imposed for the subsequent general sessions court offense."

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.

BACK TO TOP

10. MULTI-JURISDICTIONAL AGREEMENTS

RE-FILE H. 5030 (2012)
SPONSORS: TALLON AND PATRICK

A BILL TO AMEND SECTION 23-1-210, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE TEMPORARY TRANSFER OR ASSIGNMENT OF A MUNICIPAL OR COUNTY LAW ENFORCEMENT OFFICER TO A MULTIJURISDICTIONAL TASK FORCE, SO AS TO MAKE A TECHNICAL CHANGE, DELETE THE PROVISION THAT REQUIRES A COUNTY OR MUNICIPALITY THAT SENDS AN OFFICER TO ANOTHER COUNTY OR MUNICIPALITY TO BE REIMBURSED FOR SERVICES BY THE COUNTY OR MUNICIPALITY TO WHICH THE OFFICER IS TRANSFERRED OR ASSIGNED, AND TO PROVIDE THAT THE GOVERNING BODIES OF THE POLITICAL SUBDIVISIONS AFFECTED BY THIS PROVISION MUST BE NOTIFIED BY THEIR LAW ENFORCEMENT DIVISIONS OF ANY MULTIJURISDICTIONAL TASK FORCE AGREEMENT EXECUTION AND TERMINATION. Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 23-1-210 of the 1976 Code, as last amended by Act 3 of 2007, is further amended to read:

"Section 23-1-210. (A) Any municipal or county law enforcement officer may be transferred or assigned on a temporary basis to work in law enforcement within multijurisdictional task forces established for the mutual aid and benefit of the participating jurisdictions, or in any other municipality or county in this State under the conditions set forth in this section, and when so transferred or assigned shall have all powers and authority of a law enforcement officer employed by the jurisdiction to which he is transferred or assigned.

(B) Prior to any transfer or assignment as authorized in subsection (A), the concerned ~~municipalities or counties~~ agencies shall enter into written agreements stating the conditions and terms of the temporary employment of officers to be transferred or assigned. The bond for any officer transferred or assigned shall include coverage for his activity in the municipality or county to which he is transferred or assigned in the same manner and to the same extent provided by bonds of regularly employed officers of that municipality or county.

(C) Agreements made pursuant to subsection (B) shall provide that temporary transfers or assignments shall in no manner affect or reduce the compensation, pension, or retirement rights of transferred or assigned officers and such officers shall continue to be paid by the county or municipality where they are permanently employed~~, with the sending county or municipality being reimbursed for their services by the county or municipality to which they are transferred or assigned~~.

(D) The respective governing bodies of the political subdivisions, where each of the law enforcement agencies entering into the agreement authorized in subsection (A) is located, must be notified by its agency of the agreement's execution and termination. The notification must be in writing and accomplished within seventy-two hours of the agreement's execution and within seventy-two hours of the agreement's termination."

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

BACK TO TOP