



2012

SOUTH CAROLINA LAW ENFORCEMENT LEGISLATIVE AGENDA

PRESENTED BY: SOLICITORS, SHERIFFS, SLED, AND THE ATTORNEY GENERAL

**2012 LAW ENFORCEMENT LEGISLATIVE AGENDA**

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**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.**

**H. XXXX (MCCOY)**

**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 commuttee 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.

S. XXX ( )

**SAME AS HOUSE.**

## LWOP 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”<sup>1</sup> 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 2012 Law Enforcement Legislative Agenda 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).

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. 4772 (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.

**S. XXX**

**SAME AS HOUSE.**

### **Equalization of Peremptory Jury Strikes**

Currently, South Carolina<sup>2</sup> law allows a defendant tried alone to have twice as many peremptory<sup>3</sup> strikes for certain crimes as the prosecution. The crimes listed only allow for the prosecution to exercise five (5) peremptory strikes while allowing the defendant to exercise ten (10) strikes: Murder, Manslaughter, Burglary, Arson, Criminal Sexual Conduct, Armed Robbery, Grand Larceny, 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 (5) strikes and the defendant is allowed five (5) strikes.

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

Additionally, South Carolina law<sup>4</sup> only allows the prosecution one (1) peremptory strike for each alternate juror called while allowing the defendant two (2) strikes.

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<sup>2</sup> “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.”

<sup>3</sup> 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.

<sup>4</sup> “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.”

The 2012 Law Enforcement Legislative Agenda 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 (5) states that still allow a defendant to receive more peremptory strikes than the prosecution in ordinary felony cases and only seven (7) states in murder/death penalty cases.

**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.**

#### H. XXXX (MCCOY)

**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.

S. XXX ( )

**SAME AS HOUSE.**

## Repeal of 19-11-50 Summary

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

#### **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.



**4. 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. XXXX (MCCOY)**

**A BILL TO AMEND SECTION 16-3-29, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE OFFENSE OF ATTEMPTED MURDER, SO AS TO REMOVE THE INTENT TO KILL REQUIREMENT FROM THE PURVIEW OF THE OFFENSE.**

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 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.”

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.

**S. XXX (MALLOY)**

**SAME AS HOUSE.**

## Amendment of Attempted Murder Summary

### Amendment of Attempted Murder Statute

**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).**

3. **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,” AND INCLUDING INJURY TO ANOTHER PERSON IF ACCOMPLISHED BY THE “USE OF A DEADLY WEAPON.”

H. XXXX (MCCOY)

A **BILL** TO AMEND SECTION 16-3-600, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ASSAULT AND BATTERY OFFENSES, SO AS TO REDEFINE THE TERM “MODERATE BODILY INJURY” AND TO INCLUDE INJURY TO ANOTHER PERSON WHEN THE ACT IS ACCOMPLISHED BY THE USE OF A DEADLY WEAPON IN THE PURVIEW OF THE OFFENSES OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE AND ASSAULT AND BATTERY IN THE FIRST DEGREE.

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

SECTION 1. Section 16-3-600 of the 1976 Code, as last amended by Act 39 of 2011, is further amended to read:

“Section 16-3-600. (A) For purposes of this section:

(1) ‘Great bodily injury’ means bodily injury which causes a substantial 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 that involves loss of consciousness, or that requires medical treatment but does not cause a substantial risk of death or which does not cause serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.~~ 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 that involves loss of consciousness, or that requires medical treatment but does not cause a substantial risk of death or which does not cause serious, permanent disfigurement or protracted loss or impairment of the function of a bodily member or organ.

(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 the use of a deadly weapon; or

(c) 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

(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) is accomplished by the use of a deadly weapon; or

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

(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; 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.”

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

#### 4. **BOND ISSUES** - RECONSIDERATION OF BOND BASED ON CHANGE OF CIRCUMSTANCE.

##### S. 266 (MCCONNELL)

A **BILL** TO AMEND CHAPTER 15, TITLE 17 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, BY ADDING SECTION 17-15-55, SO AS TO PROVIDE THAT THE CIRCUIT COURT SHALL CONSIDER MOTIONS REGARDING RECONSIDERATION OF BOND OR GENERAL SESSIONS OFFENSES SET BY A SUMMARY COURT JUDGE; TO PROVIDE THAT FURTHER DEFENSE MOTIONS TO RECONSIDER BOND MAY BE HEARD BY THE CIRCUIT COURT ONLY UPON THE DEFENDANT'S PRIMA FACIE SHOWING OF A MATERIAL CHANGE IN CIRCUMSTANCE; TO PROVIDE THAT MOTIONS BY THE STATE TO REVOKE OR MODIFY A DEFENDANT'S BOND MUST BE MADE IN WRITING, STATE WITH PARTICULARITY THE GROUNDS FOR REVOCATION OR MODIFICATION, AND SET FORTH THE RELIEF OR ORDER SOUGHT; AND TO PROVIDE THAT, IF THE STATE'S MOTION TO REVOKE OR MODIFY BOND INCLUDES A PRIMA FACIE SHOWING OF IMMINENT DANGER TO THE COMMUNITY, OR IMMINENT DANGER TO THE DEFENDANT OR FLIGHT BY THE DEFENDANT, THE CHIEF JUDGE OR PRESIDING JUDGE SHALL CONDUCT OR ORDER AN EMERGENCY HEARING WITHIN FORTY-EIGHT HOURS.

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

SECTION 1. Chapter 15, Title 17 of the 1976 Code is amended by adding:

"Section 17-15-55. (A)(1) The circuit court shall consider motions regarding reconsideration of bond for general sessions offenses set by a summary court judge upon a motion filed with the clerk of court. Hearing of these motions must be scheduled by the solicitor. The rules of evidence do not apply to bond hearings.

(2) After a circuit court judge has heard and ruled upon a defendant's motion to reconsider a bond set by a summary court judge, further defense motions to reconsider may be heard by the circuit court only upon the defendant's prima facie showing of a material change in circumstance which relates to the factors set forth in Section 17-15-30, and which has arisen since the prior motion to reconsider. The chief judge shall schedule a hearing, or, if such showing is not set forth in the written motion, deny the motion for failure to make a prima facie showing of a material change in circumstance. Information regarding the defendant's guilt or innocence does not qualify as a change in circumstance for purposes of reconsidering bond absent consent of the solicitor.

(B)(1) Motions by the State to revoke or modify a defendant's bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or

order sought. The motion must be filed with the clerk of court, and a copy must be served on the chief judge, defense counsel, and bond surety, if any.

(2) If the State's motion to revoke or modify bond includes a prima facie showing of imminent danger to the community, or imminent danger to the defendant or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted by the circuit court or a designee, including a summary court judge, within forty-eight hours of receiving service of the State's motion. The chief judge shall order the solicitor to notify the defense counsel and bond surety of the time and date of the hearing, and the solicitor must provide proof that reasonable efforts were made to affect such notice. Upon notice by the State, the defense counsel and bond surety must make reasonable efforts to notify the defendant of the emergency hearing and secure the defendant's presence at the hearing. The court may, in its discretion, proceed with the hearing despite the absence of the defendant, defense counsel, or bond surety. Upon receiving notice of the chief judge's order for an emergency hearing, the bond surety may surrender the defendant to the county of jurisdiction's detention center in accordance with Section 38-53-50(b). If an emergency bond hearing is held without the presence of the defendant or defense counsel, and bond is revoked, the judge having heard the matter, in his discretion, may conduct a hearing on the defendant's motion to reconsider the revocation. Such defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety."

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



## S. 45 (MCCONNELL)

**A BILL TO AMEND CHAPTER 15, TITLE 17 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, BY ADDING SECTION 17-15-55, SO AS TO PROVIDE THAT THE CIRCUIT COURT SHALL CONSIDER MOTIONS REGARDING RECONSIDERATION OF BOND FOR GENERAL SESSIONS OFFENSES SET BY A SUMMARY COURT JUDGE; TO PROVIDE THAT FURTHER DEFENSE MOTIONS TO RECONSIDER BOND MAY BE HEARD BY THE CIRCUIT COURT ONLY UPON THE DEFENDANT'S PRIMA FACIE SHOWING OF A MATERIAL CHANGE IN CIRCUMSTANCE; TO PROVIDE THAT MOTIONS BY THE STATE TO REVOKE OR MODIFY A DEFENDANT'S BOND MUST BE MADE IN WRITING, STATE WITH PARTICULARITY THE GROUNDS FOR REVOCATION OR MODIFICATION, AND SET FORTH THE RELIEF OR ORDER SOUGHT; AND TO PROVIDE THAT, IF THE STATE'S MOTION TO REVOKE OR MODIFY BOND INCLUDES A PRIMA FACIE SHOWING OF IMMINENT DANGER TO THE COMMUNITY, OR IMMINENT DANGER TO THE DEFENDANT, OR FLIGHT BY THE DEFENDANT, THE CHIEF JUDGE OR PRESIDING JUDGE SHALL CONDUCT OR ORDER AN EMERGENCY HEARING WITHIN FORTY-EIGHT HOURS.**

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

SECTION 1. Chapter 15, Title 17 of the 1976 Code is amended by adding:

"Section 17-15-55. (A)(1) The circuit court shall consider motions regarding reconsideration of bond for general sessions offenses set by a summary court judge upon a motion filed with the clerk of court. Hearing of these motions must be scheduled by the solicitor. The rules of evidence do not apply to bond hearings.

(2) After a circuit court judge has heard and ruled upon a defendant's motion to reconsider a bond set by a summary court judge, further defense motions to reconsider may be heard by the circuit court only upon the defendant's prima facie showing of a material change in circumstance which relates to the factors set forth in Section 17-15-30, and which has arisen since the prior motion to reconsider. The chief judge shall schedule a hearing, or, if such showing is not set forth in the written motion, deny the motion for failure to make a prima facie showing of a material change in circumstance. Information regarding the defendant's guilt or innocence does not qualify as a change in circumstance for purposes of reconsidering bond absent consent of the solicitor.

(B)(1) Motions by the State to revoke or modify a defendant's bond must be made in writing, state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The motion must be filed with the clerk of court, and a copy must be served on the chief judge, defense counsel, and bond surety, if any.

(2) If the State's motion to revoke or modify bond includes a prima facie showing of imminent danger to the community, or imminent danger to the defendant or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency bond hearing to be conducted

by the circuit court or a designee, including a summary court judge, within forty-eight hours of receiving service of the State's motion. The chief judge shall order the solicitor to notify the defense counsel and bond surety of the time and date of the hearing, and the solicitor must provide proof that reasonable efforts were made to affect such notice. Upon notice by the State, the defense counsel and bond surety must make reasonable efforts to notify the defendant of the emergency hearing and secure the defendant's presence at the hearing. The court may, in its discretion, proceed with the hearing despite the absence of the defendant, defense counsel, or bond surety. Upon receiving notice of the chief judge's order for an emergency hearing, the bond surety may surrender the defendant to the county of jurisdiction's detention center in accordance with Section 38-53-50(b). If an emergency bond hearing is held without the presence of the defendant or defense counsel, and bond is revoked, the judge having heard the matter, in his discretion, may conduct a hearing on the defendant's motion to reconsider the revocation. Such defense motions to reconsider revocation must be filed with the clerk of court and served on the solicitor and bond surety."

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

## Summary of S.266 (similar S.45)

### **Passage of Senate Bills 266 (similar S.45) dealing with Reconsideration of Bonds**

S.266 has been introduced by Senator McConnell. This bill would provide that the circuit court shall consider motions regarding reconsideration of bond for general sessions offenses set by a summary court judge and would provide that further defense motions to reconsider bond may be heard by the circuit court only upon a defendant's prima facie showing of a material change in circumstance. It would also provide that motions by the state to revoke or modify a defendant's bond must be made in writing and state with particularity the grounds for revocation or modification, and set forth the relief or order sought. The bill would also provide that, if the state's motion to revoke or modify bond includes a prima facie showing of imminent danger to the community, or imminent danger to the defendant or flight by the defendant, the chief judge or presiding judge shall conduct or order an emergency hearing within forty-eight hours.

Passage of S.266 would create a framework for the court's handling of bond reconsideration motions. Currently, there are no rules of procedure governing bond reconsiderations.

5. **BATH SALTS** - ADDS BATH SALTS TO THE LIST OF SCHEDULE I DRUGS AS REQUESTED BY LAW ENFORCEMENT AGENCIES.

H. 3793 (THAYER)

A BILL TO AMEND SECTION 44-53-190, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MATERIALS, COMPOUNDS, MIXTURES, AND PREPARATIONS CLASSIFIED AS SCHEDULE I CONTROLLED SUBSTANCES, INCLUDING HALLUCINOGENICS, SO AS TO ADD METHYLONE, MDPV, MEPHEDRONE, METHOXYMETHCATHINONE, AND FLUROROMETHCATHINONE, COMMONLY REFERRED TO AS "**BATH SALTS**", TO THE LIST OF SCHEDULE I DRUGS.

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

SECTION 1. Section 44-53-190 of the 1976 Code, as last amended by Act 267 of 2002, is further amended to read:

"Section 44-53-190. (A) The controlled substances listed in this section are included in Schedule I.

(B) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation:

1. Acetylmethadol
2. Allylprodine
3. Alphacetylmethadol
4. Alphameprodine
5. Alphamethadol
6. Benzethidine
7. Betacetylmethadol
8. Betameprodine
9. Betamethadol
10. Betaproline

11. Clonitazene
12. Dextromoramide
13. [Deleted]
14. Diampromide
15. Diethylthiambutene
16. Dimenoxadol
17. Dimepheptanol
18. Dimethylthiambutene
19. Dioxaphetyl butyrate
20. Dipipanone
21. Ethylmethylthiambutene
22. Etonitazene
23. Etoxeridine
24. Furethidine
25. Hydroxypethidine
26. Ketobemidone
27. Levomoramide
28. Levophenacymorphan
29. Morpheridine
30. Noracymethadol
31. Norlevorphanol
32. Normethadone
33. Norpipanone

34. Phenadoxone
35. Phenampromide
36. Phenomorphan
37. Phenoperidine
38. Piritramide
39. Proheptazine
40. Properidine
41. Racemoramide
42. Trimeperidine
43. Propiram
44. Difenoxin
45. Alfentanyl
46. Tilidine
47. Alphamethylfentanyl (N- [1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl-4-(N-propanilido) piperidine).

(C) Any of the following opium derivatives, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. Acetorphine
2. Acetyldihydrocodeine
3. Benzylmorphine
4. Codeine methylbromide
5. Codeine-N-Oxide
6. Cyprenorphine
7. Desomorphine

8. Dihydromorphine
9. Etorphine
10. Heroin
11. Hydromorphanol
12. Methyldesorphine
13. Methylhydromorphine
14. Morphine methylbromide
15. Morphine methylsulfonate
16. Morphine-N-Oxide
17. Myrophine
18. Nicocodeine
19. Nicomorphine
20. Normorphine
21. Pholcodine
22. Thebacon
23. Drotebanol

(D) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

1. 3,4-methylenedioxy amphetamine
2. 5-methoxy-3,4-methylenedioxy amphetamine
3. 3,4-methylenedioxymethamphetamine (MDMA)
4. 3,4,5-trimethoxy amphetamine
5. Bufotenine

6. Diethyltryptamine (DET)
7. Dimethyltryptamine (DMT)
8. 4-methyl-2,5-dimethoxyamphetamine (STP)
9. Ibogaine
10. Lysergic acid diethylamide (LSD)
11. Marijuana
12. Mescaline
13. Peyote
14. N-ethyl-3-piperidyl benzilate
15. N-methyl-3-piperidyl benzilate
16. Psilocybin
17. Psilocyn
18. Tetrahydrocannabinol (THC)
19. 2,5-dimethoxyamphetamine
20. 4-bromo-2,5-dimethoxyamphetamine
21. 4-Methoxyamphetamine
22. Thiophene analog of phencyclidine
23. Parahexyl
24. Synthetic cannabinoids. - Any material, compound, mixture, or preparation that is not listed as a controlled substance in Schedule I through V, is not an FDA-approved drug, and contains any quantity of the following substances, their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical designation:
  - a. Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl, or 2-(4-morpholinyl)ethyl



group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Including, but not limited to, JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398, AM-2201, WIN 55-212, AM-2201 (C1 analog), AM-1220.

b. Naphthylmethylindeles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.

c. Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Including, but not limited to, JWH-307, JWH-370, JWH-176.

d. Naphthylmethylindenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.

e. Phenylacetylindeles. Any compound containing a 3-phenylacetylindele structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Including, but not limited to, SR-18, RCS-8, JWH-203, JWH-250, JWH-251.

f. Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. Including, but not limited to, CP 47,497 (and homologues), cannabicyclohexanol, CP-55, 940.

g. Benzoylindeles. Any compound containing a 3-(benzoyl)indele structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Including, but not limited to, AM-694, Pravadoline (WIN 48,098), RCS-4, AM-630, AM-1241, AM-2233.

h. 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de]-1, 4-benzoxazin-6-yl]-1-naphthalenylmethanone. (WIN 55,212-2).

i. 9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl) - 6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol 7370. (HU-210, HU-211).

j. Adamantoylindoles. Any compound containing a 3-(1-adamantoyl)indole structure with substitution at the nitrogen atom of the indole ring by a alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidiny)methyl or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the adamantyl ring system to any extent.

(E) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers if possible within the specific chemical designation:

- (1) Mecloqualone;
- (2) Methaqualone; or
- (3) Gamma Hydroxybutyric Acid.

(F) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Fenethylamine;
- (2) N-ethylamphetamine;
- (3) Cathinone; or
- (4) Substituted Cathinones.

Any compound (not being bupropion) structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways:

- (a) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;
- (b) by substitution at the 3-position with an alkyl substituent;
- (c) by substitution at the nitrogen atom with alkyl or dialkyl groups, benzyl or methoxybenzyl groups; or
- (d) by inclusion of the nitrogen atom in a cyclic structure.

Including, but not limited to: Methylone, Mephedrone, 3,4-Methylenedioxypropylone (MDPV), Butylone, Methedrone, 4-Methylethcathinone, Flephedrone, Pentylone, Pentedrone, Buphedrone."

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

**6. POLICE DOG - PROVIDES FOR CERTAIN EXEMPTIONS RELATING TO THE LIABILITY OF THE OWNER OR A PERSON HAVING A TRAINED POLICE DOG IN HIS CARE WHEN THE DOG ATTACKS A PERSON.**

**H. 3640 (TALLON)**

**A BILL TO AMEND SECTION 47-3-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LIABILITY OF THE OWNER OR A PERSON HAVING A DOG IN HIS CARE WHEN THE DOG ATTACKS A PERSON, SO AS TO PROVIDE THAT THIS PROVISION DOES NOT APPLY TO CERTAIN TRAINED POLICE DOGS.**

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

SECTION 1. Section 47-3-110 of the 1976 Code is amended to read:

"Section 47-3-110. (A) Whenever any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, when the person bitten or otherwise attacked is on the property in the performance of any duty imposed upon him by the laws of this State, by the ordinances of any political subdivision of this State, by the laws of the United States of America, including, but not limited to, postal regulations, or when the person bitten or otherwise attacked is on the property upon the invitation, express or implied, of the owner of the property or of any lawful tenant or resident of the property. ~~If a person provokes a dog into attacking him then the owner of the dog is not liable.~~

(B) The provisions contained in subsection (A) do not apply to a trained police dog acting under the direct supervision of its law enforcement handler when the bite or attack was the result of a command by the handler during a law enforcement action.

(C) If a person provokes a dog into attacking him, then the owner of the dog is not liable."

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

S. 485 (KNOTTS)

A BILL TO AMEND SECTION 47-3-110, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE LIABILITY OF THE OWNER OR A PERSON HAVING A DOG IN HIS CARE WHEN THE DOG ATTACKS A PERSON, SO AS TO PROVIDE THAT THIS PROVISION DOES NOT APPLY TO CERTAIN TRAINED POLICE DOGS.

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

SECTION 1. Section 47-3-110 of the 1976 Code is amended to read:

"Section 47-3-110. (A) Whenever any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked. For the purposes of this section, a person bitten or otherwise attacked is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, when the person bitten or otherwise attacked is on the property in the performance of any duty imposed upon him by the laws of this State, by the ordinances of any political subdivision of this State, by the laws of the United States of America, including, but not limited to, postal regulations, or when the person bitten or otherwise attacked is on the property upon the invitation, express or implied, of the owner of the property or of any lawful tenant or resident of the property. ~~If a person provokes a dog into attacking him then the owner of the dog is not liable.~~

(B) The provisions contained in subsection (A) do not apply to a trained police dog acting under the direct supervision of its law enforcement handler when the bit or attack was the result of a command by the handler during a law enforcement action.

(C) If a person provokes a dog into attacking him, then the owner of the dog is not liable."

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

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**7. HUMAN TRAFFICKING - AMENDS THE CURRENT HUMAN TRAFFICKING LAW BY ADDING CERTAIN OFFENSES AND PROVIDING PENALTIES, CREATING CRIMINAL LIABILITY FOR BUSINESSES, PROVIDING RESTITUTION AND CIVIL ACTIONS FOR VICTIMS, AND ESTABLISHING A PREVENTATIVE TASK FORCE.**

**H. 3757 (HARDWICK)**

**A BILL TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 3, TITLE 16 SO AS TO DEFINE NECESSARY TERMS, PROVIDE FOR CERTAIN HUMAN TRAFFICKING OFFENSES AND PROVIDE PENALTIES, TO PROVIDE FOR CRIMINAL LIABILITY OF BUSINESS ENTITIES, TO PROVIDE RESTITUTION FOR VICTIMS OF HUMAN TRAFFICKING OFFENSES, TO ESTABLISH AN INTERAGENCY TASK FORCE TO DEVELOP AND IMPLEMENT A PLAN FOR THE PREVENTION OF TRAFFICKING IN PERSONS, TO REQUIRE THE COLLECTION AND DISSEMINATION OF DATA RELATED TO HUMAN TRAFFICKING BY THE STATE LAW ENFORCEMENT DIVISION (SLED), TO REQUIRE MANDATORY LAW ENFORCEMENT TRAINING ON HUMAN TRAFFICKING OFFENSES, TO PROVIDE FOR THE CREATION OF PUBLIC AWARENESS PROGRAMS REGARDING HUMAN TRAFFICKING IN THE STATE, TO ALLOW CIVIL ACTIONS BY VICTIMS OF HUMAN TRAFFICKING, TO PROVIDE THAT CERTAIN STANDARDS OF WORKING CONDITIONS APPLY WITHOUT REGARD TO IMMIGRATION STATUS, TO PROVIDE CERTAIN PROTECTIONS FOR VICTIMS OF HUMAN TRAFFICKING PURSUANT TO THE VICTIMS' BILL OF RIGHTS AND OTHER RELEVANT STATUTORY PROVISIONS, TO REQUIRE THE STATE TO DEVELOP PLANS FOR HOUSING AND COUNSELING, AMONG OTHER THINGS, OF VICTIMS OF HUMAN TRAFFICKING WITHIN ONE HUNDRED EIGHTY DAYS OF THE EFFECTIVE DATE OF THE ACT, TO PROVIDE FOR CERTAIN RIGHTS OF MINOR VICTIMS OF HUMAN TRAFFICKING, TO ESTABLISH HUMAN TRAFFICKING VICTIM-CASEWORKER PRIVILEGE, AND TO CREATE THE OFFENSE OF MALICIOUSLY OR WITH CRIMINAL NEGLIGENCE PUBLISHING, DISSEMINATING, OR OTHERWISE DISCLOSING THE LOCATION OF A HUMAN TRAFFICKING VICTIM, A TRAFFICKING SHELTER, OR A DOMESTIC VIOLENCE SHELTER AND TO PROVIDE A PENALTY; AND TO REPEAL SECTION 16-3-930 RELATING TO TRAFFICKING IN PERSONS FOR FORCED LABOR OR SERVICES.**

Whereas, an estimated twenty-seven million people are currently enslaved around the world; and

Whereas, the United States State Department estimates that between 14,000 and 17,000 people are trafficked into our borders each year; and

Whereas, crimes of this nature have occurred in Myrtle Beach, Charleston, Columbia, and Greenville, South Carolina; and

Whereas, it is our responsibility to protect our people, combat crime, and promote legislation that can enable this behavior throughout our State. Now, therefore,

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

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

"Article 19

Human Trafficking

Section 16-3-2010. As used in this article:

- (1) 'Commercial sex act' means a sex act for which anything of value is given, promised to, or received, directly or indirectly, by another person.
- (2) 'Debt coercion' means exploitation of the status or condition of a debtor arising from a pledge by the debtor of his personal services or those of a person under his control as a security or payment for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined, or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.
- (3) 'Labor' means work of economic or financial value.
- (4) 'Minor' refers to a natural person under eighteen years of age.
- (5) 'Person' includes an individual, corporation, partnership, association, a government body, municipal corporation, or another legal entity.
- (6) 'Services' means an act committed at the behest of, under the supervision of, or for the benefit of another person.
- (7) 'Sex act' means touching of the sexual or other intimate parts of another person for the purpose of gratifying sexual desire of another person. It includes touching of the person as well as touching by the person, whether directly or through clothing.
- (8) 'Sexually explicit performance' means an act or show, intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, or videotaped.
- (9) 'Victim of trafficking in persons' means a person, whether a United States citizen or foreign national, who has been subjected to the crime of trafficking in persons, sexual servitude of a minor, or involuntary servitude.

Section 16-3-2020. (A) A person who knowingly recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, another person knowing that the person will be subjected to sexual servitude of a minor or involuntary servitude or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than fifteen years.

(B) A person who knowingly recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a minor for the purposes of a commercial sex act or sexually explicit performance through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in subsection (A), is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than twenty years.

(C) A person who knowingly subjects, or attempts to subject, another person to:

(1) a commercial sex act or sexually explicit performance; or

(2) labor or services through use of any of the following means:

(a) causing or threatening to cause serious harm to any person;

(b) physically restraining or threatening to physically restrain another person;

(c) abusing or threatening to abuse the law or legal process;

(d) knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or another actual or purported government identification document, of another person;

(e) extortion or blackmail;

(f) deception or fraud;

(g) debt coercion;

(h) causing or threatening to cause financial harm to another person;

(i) facilitating or controlling a victim's access to an addictive controlled substance; or

(j) using any scheme, plan, or pattern, whether overt or subtle, intended to cause a person to believe that if the person did not perform the labor, services, acts or performances, that person or another person would suffer serious harm or physical restraint, is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than ten years.



(D) A person who knowingly aids, abets, or conspires with another person to violate the criminal provisions of this section must be punished in the same manner as provided for the principal offender.

(E) A plea of guilty entered under a provision of this article by an offender entitles the victim of trafficking in persons to all benefits, rights, and compensation granted pursuant to state law.

(F) In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he or she was under duress or coerced into committing the offenses for which he or she is being subject to prosecution. A victim of trafficking in persons is not criminally liable for any commercial sex act or illegal sexually explicit performance committed as a direct result of, or incident or related to, being trafficked.

(G) Evidence of the following facts or conditions do not constitute a defense in a prosecution for violations of this article, nor shall the evidence preclude a finding of a violation:

- (1) the trafficking victim's sexual history or history of commercial sexual activity;
- (2) the trafficking victim's connection by blood or marriage to a defendant in the case or to anyone involved in the victim's trafficking;
- (3) consent of, or permission by, a trafficking victim or anyone else on the trafficking victim's behalf to a commercial sex act or sexually explicit performance;
- (4) age of consent to sex, legal age of marriage, or other discretionary age; and
- (5) mistake as to the victim's age, even if the mistake is reasonable.

Section 16-3-2030. (A) A business entity, including a corporation, partnership, association, government body, municipal corporation or another legal entity, that aids or participates in an offense provided in Section 16-3-2020 is criminally liable for the offense and will be subject to a fine or loss of business license in the State, or both.

(B) If a business entity is convicted of violating a section of this article, the court, when appropriate, may:

- (1) order its dissolution or reorganization;
- (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency; or
- (3) order the surrender of its charter if it is organized under State law or the revocation of its certificate to conduct business in the State if it is not organized under State law.

Section 16-3-2040. (A) A person convicted of a violation of this article must be ordered to pay mandatory restitution to the victim as provided in subsection (C).

(B) For restitution purposes alone, 'victim' means a victim of trafficking in persons. If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim of trafficking is eligible for restitution. If no surviving spouse exists, restitution must be paid to the victim's issue or their descendants per stirpes. If no surviving spouse, issue or descendants exist, restitution must be paid to the victim's estate. A person named in this provision may not receive funds from restitution if he benefited or engaged in conduct described in this article.

(C) Restitution pursuant to this section includes items covered by Article 3, Chapter 13, Title 16 in addition to:

(1) costs of medical and psychological treatment, including physical and occupational therapy and rehabilitation, at the court's discretion;

(2) costs of necessary transportation, temporary housing, and childcare, at the court's discretion;

(3) attorney's fees and other court-related costs such as victim advocate fees;

(4) the greater of:

(i) the gross income or value to the defendant of the trafficking victim's commercial sex acts or sexually explicit performances, or labor or services;

(ii) the value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA); or

(iii) the value of the trafficking victim's labor as guaranteed under the minimum wage and overtime provisions of state labor law.

(5) return of property, cost of damage to property, or full value of property if destroyed or damaged beyond repair;

(6) compensation for emotional distress, pain, and suffering;

(7) expenses incurred by a victim and any household members or other family members in relocating away from the defendant or his associates including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section must be verified by law enforcement to be necessary for the personal safety of the victim or household or family members, or by a mental health treatment provider to be necessary for the emotional well-being of the victim; and

(8) any and all other losses suffered by the victim as a result of violations of this article.

(D) Restitution must be paid to the victim promptly upon the conviction of the defendant, with the proceeds from property forfeited under this subsection applied first to payment of restitution.

The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving restitution.

(E) Nonpayment or delay in payment of restitution must be governed by the Director of the Victim's Compensation Fund.

(F) All offenses pursuant to this article qualify as offenses for forfeiture and are subject to the provisions as provided by law. Overseas assets of persons convicted of trafficking in persons also are subject to forfeiture to the extent they can be retrieved by the government. Assets seized first must be used to pay restitution to trafficking victims and subsequently to pay damages awarded to victims in a civil action. Remaining assets go toward funding services for victims of trafficking, the law enforcement task force, and other funding needs as required by this article.

Section 16-3-2050. (A) The Governor shall establish an interagency task force to develop and implement a State Plan for the Prevention of Trafficking in Persons. The task force shall meet at least annually and should include all aspects of trafficking, including sex trafficking and labor trafficking of both United States citizens and foreign nationals.

(B) 'Trafficking' as used in this section refers to the crimes defined in Section 16-3-2020.

(C) The Governor shall appoint the members of the task force, which must include, at a minimum, representatives from:

- (1) Office of the Attorney General;
- (2) the Employment Security Commission;
- (3) the Police Chiefs Association;
- (4) the State Sheriffs Association;
- (5) the State Law Enforcement Division;
- (6) local law enforcement entities;
- (7) the Department of Health and Environmental Services;
- (8) the Department of Social Services; and
- (9) persons from nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of human trafficking.

(D) The Governor shall invite representatives of the United States Attorneys' offices and of federal law enforcement agencies' offices within the State, including the Federal Bureau of

Investigations and the United States Immigration and Customs Enforcement office, to be members of the task force.

(E) The task force shall carry out the following activities either directly or via one or more of its constituent agencies:

(1) develop the state plan;

(2) coordinate the implementation of the state plan;

(3) coordinate the collection and sharing of trafficking data among government agencies, which data collection must respect the privacy of victims of trafficking in persons;

(4) coordinate the sharing of information between agencies for the purposes of detecting criminal groups engaged in trafficking;

(5) explore the establishment of state policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in Section 214.11(f)(1) of Chapter 8 of the Code of Federal Regulations;

(6) establish policies to enable state government to work with nongovernmental organizations and other elements of civil society to prevent trafficking and provide assistance to United States citizens and foreign national victims;

(7) review the existing services and facilities to meet trafficking victims' needs and recommend a system that would coordinate services including, but not limited to, health services, including mental health, housing, education and job training, English as a second language classes, interpreting services, legal and immigration services, and victim compensation;

(8) evaluate various approaches used by state and local governments to increase public awareness of the trafficking in persons, including United States citizens and foreign national victims of trafficking in persons; and

(9) submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December thirty-first of each calendar year.

Section 16-3-2060. (A) The State Law Enforcement Division (SLED), in cooperation with other appropriate authorities, shall collect and periodically publish statistical data on trafficking.

(B) SLED shall elicit the cooperation and assistance of other government agencies, nongovernmental organizations, and other elements of civil society as appropriate to assist in the data collection required pursuant to this section.

(C) The appropriate authorities in each agency that play a vital role in addressing trafficking shall make their best effort to collect information relevant to tracking progress on trafficking including, but not limited to:

- (1) numbers of investigations, arrests, prosecutions, and successful convictions of traffickers and those committing trafficking-related crimes (prostitution, child pornography, visa fraud, document fraud, and other crimes related to trafficking);
- (2) the estimated number and demographic characteristics of persons engaged in violations of the criminal provisions defined in this article as well as persons who purchase or receive commercial sex acts or sexually explicit performances, or labor or services, performed by victims of trafficking in persons;
- (3) statistics on the number of victims, including nationality, age, method of recruitment, and city, state, and country of origin;
- (4) trafficking routes and patterns (states or countries of origin, transit states or countries, and destination states or countries);
- (5) methods of transportation (car, boat, plane, foot), if transportation took place; and
- (6) social and economic factors that contribute to and foster the demand for all forms of exploitation of persons that lead to trafficking.

Section 16-3-2070. (A) SLED shall provide mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons.

(B) Training shall focus on:

- (1) the new crimes and other provisions created by this article;
- (2) methods used in identifying United States citizens and foreign national victims of trafficking in persons, including preliminary interview techniques and appropriate questioning methods;
- (3) methods for prosecuting traffickers;
- (4) methods of increasing effective collaboration with nongovernmental organizations and other relevant social service organizations in the course of investigating and prosecuting a trafficking case;
- (5) methods for protecting the rights of victims, taking into account the need to consider human rights and special needs of women and minor victims, and that victims should be treated as victims rather than criminals; and
- (6) methods for promoting the safety of victims.

(C) SLED shall seek the input and participation of appropriate nongovernmental organizations and other relevant organizations in the preparation and presentation of training required by this section.

Section 16-3-2080. (A) SLED, in cooperation with appropriate nongovernmental organizations, shall prepare public awareness programs designed to educate potential victims of trafficking in persons and their families on the risks of victimization. These public awareness programs must include, but are not be limited to:

(1) information about the risks of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure to HIV/AIDS and other sexually transmitted diseases, and psychological harm related to victimization in trafficking cases;

(2) information about the risks of engaging in commercial sex and possible punishment;

(3) information about victims' rights in the State;

(4) methods for reporting suspected recruitment activities; and

(5) information on hotlines and available victims' services.

(B) The State in cooperation with other appropriate government agencies and appropriate nongovernmental organizations or other elements of civil society shall prepare and disseminate general public awareness materials to educate the public on the extent of trafficking in persons, both United States citizens and foreign nationals, within the United States; and to discourage the demand that fosters the exploitation of persons that leads to trafficking.

(C) General public awareness materials may include information on the impact of trafficking on individual victims, whether United States citizens or foreign nationals; aggregate information on trafficking worldwide and domestically; and warnings of the criminal consequences of engaging in trafficking. These materials may include pamphlets, brochures, posters, advertisements in mass media, and other appropriate media.

(D) Materials described in this section may include information on the impact of trafficking on individual victims. However, information on the experiences of individual victims must preserve the privacy of the victim and the victim's family.

(E) All public awareness programs must be evaluated periodically to ensure their effectiveness.

(F) Subject to the availability of appropriations, SLED shall make grants to units of local government, Indian tribes, and nonprofit, nongovernmental victims' service organizations to develop, expand, or strengthen victim service programs for victims of trafficking in persons, whether United States citizens or foreign nationals; to carry out the purposes of prevention of trafficking; and to carry out the purposes of victim protection.

(G) For each state initiative for the prevention of trafficking including, but not limited to, those listed above, SLED shall seek out and enlist the cooperation and assistance of nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of trafficking.

Section 16-3-2090. (A) A person who is a victim of trafficking may bring a civil action in the court of common pleas. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and other appropriate relief. A prevailing plaintiff also must be awarded attorney's fees and costs. Treble damages must be awarded on proof of actual damages when the defendant's acts were wilful and malicious.

(B) A statute of limitation imposed for the filing of a civil suit does not start to run until the minor plaintiff has reached the age of majority.

(C) If a person entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him or her to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

(D) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(E) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action or placing the plaintiff under duress.

Section 16-3-2100. (A) Standards for working conditions provided by law apply equally to persons with or without the legal right to work in the United States.

(B) The State shall investigate complaints of unlawful working conditions without regard to the immigration status of complainants and without regard to the nature of the work or services involved.

Section 16-3-2110. Investigative, prosecutorial, and other appropriate authorities shall interview all persons arrested on charges of prostitution and take all other steps necessary to identify victims of trafficking in persons, including United States citizens and foreign nationals. Once victims are identified, these authorities shall provide reasonable protection to victims of trafficking in persons to prevent recapture by the traffickers and their associates, secure the victim and the victim's family from threats, reprisals or intimidation by the traffickers and their associates, and ensure the victim has an opportunity to consult with a victim advocate or other appropriate person to develop a safety plan.

Section 16-3-2120. (A) Victims of trafficking in persons pursuant to this article are considered victims for purposes of the Victims' Bill of Rights and are entitled to all appropriate forms of compensation available pursuant to the State Crime Victim's Compensation Fund in accordance with the provisions of Article 13, Chapter 3, Title 16. Victims of trafficking in persons pursuant to this article also are entitled to avail themselves of the rights provided in Article 15, Chapter 3, Title 16.

(B) In addition to the provisions of subsection (A), in a prosecution for violations of the criminal provisions of this article, the identity of the victim and the victim's family must be kept confidential by ensuring that names and identifying information of the victim and victim's family are not released to the public, including by the defendant.

Section 16-3-2130. (A) Within one hundred eighty days of the effective date of this article, the State shall develop plans, in consultation with nongovernmental organizations and other elements of civil society, for the provision of appropriate services, from governmental and nongovernmental sources, for victims of trafficking in persons, whether United States citizens or foreign nationals, and dependents accompanying the victims, or parents or guardians of minor victims including, but not limited to:

- (1) appropriate housing, taking into account the person's status as a victim of crime and including safe conditions for sleeping, food, and personal hygiene;
- (2) psychological counseling in a language the victim can understand;
- (3) medical assistance in a language the victim can understand;
- (4) childcare;
- (5) other material assistance as appropriate;
- (6) employment, educational, language, and training opportunities; and
- (7) legal assistance in a language the victim understands.

(B) Foreign national victims of trafficking in persons and their accompanying dependent children are entitled to receive social benefits in the same manner as refugees.

(C) Whenever possible, victims of trafficking in persons will not be given shelter in prisons or other detention facilities for accused or convicted criminals. Child victims of trafficking in persons will not be housed in prisons or other detention facilities for accused or convicted criminals or juvenile delinquents under any circumstances.

(D) Residence in shelters or other facilities established pursuant to this section is voluntary and victims may decline to stay in shelters or other facilities.



(E) Victims in shelters or other facilities have the option to communicate with and receive visits from family, friends, attorneys, and advocates.

(F) The governmental service providers described in subsection (A) shall take into account the age, gender, and special needs of victims and accompanying dependent children in formulating plans to provide services to them and in delivering such services.

(G) Plans developed in accordance with subsection (A) must be submitted for approval to appropriate state authorities, which also shall undertake periodic reviews of the plans and their implementation to ensure compliance with the requirements of this article and to ensure that all victims are treated with respect for their human rights and dignity.

Section 16-3-2140. The provisions of this article must be provided to trafficking victims who are minors in a manner that is in the minor's best interests and appropriate to their situation. Minor trafficking victims must be provided with appropriate services, which may include an explanation of their rights, privacy, housing, care, and age-appropriate support and rights pursuant to state law. Special programs must be developed to accommodate minor witnesses including, but not limited to:

- (1) testimony of a minor conducted outside of a court setting or by video;
- (2) all testimony and court proceedings take place with parent, legal guardian, or foster parent present, if it is in the best interest of the minor;
- (3) when safe and possible, minors should be reunited with family members, whether within or outside the United States;
- (4) special mental and physical medical care tailored to the minor's needs; and
- (5) upon resettlement in a new country, minor victims of trafficking in persons should be guaranteed education that matches or exceeds the general standard of education in the country.

Section 16-3-2150. (A) A trafficking victim, whether or not a party to the action, has the privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between the victim and a human trafficking caseworker if the privilege is claimed by any of the following persons:

- (1) the holder of the privilege;
- (2) a person who is authorized to claim the privilege by the holder of the privilege; or
- (3) the person who was the human trafficking caseworker at the time of the confidential communication. However, that person may not claim the privilege if there is no holder of the privilege in existence or if he is otherwise instructed by a person authorized to permit disclosure. The human trafficking caseworker who received or made a communication subject to the privilege granted by this article shall claim the privilege when he is present when the

communication is sought to be disclosed, and he is authorized to claim the privilege pursuant to this section.

(B) A human trafficking caseworker shall inform a trafficking victim of applicable limitations on confidentiality of communications between the victim and the caseworker. This information may be given orally.

(C) As used in this article, 'human trafficking caseworker' means a person who is employed by an organization whether financially compensated or not, for the purpose of rendering advice or assistance to victims of human trafficking, who has received specialized training in the counseling of victims of trafficking in persons, and who meets one of the following requirements:

(1) holds a master's degree or higher in counseling or a related field or has one year of counseling experience, at least six months of which is in the counseling of victims of trafficking in persons; or

(2) has at least forty hours of training as specified in this section and is supervised by a person who qualifies as a counselor pursuant to item (1), or by a psychotherapist. The training, supervised by a person qualified pursuant to item (1), shall include, but is not be limited to, the following areas:

(a) history of human trafficking;

(b) civil and criminal law as it relates to human trafficking;

(c) societal attitudes towards human trafficking;

(d) peer counseling techniques;

(e) housing;

(f) public assistance and other financial resources available to meet the financial needs of trafficking victims; and

(g) referral services available to trafficking victims.

A portion of this training must include an explanation of privileged communication.

(D) As used in this article, 'confidential communication' means information transmitted between the victim and the caseworker in the course of their relationship and in confidence by a means which, so far as the victim is aware, discloses the information to no third persons other than those who are present to further the interests of the victim in the consultation or those to whom disclosures are reasonably necessary for the transmission of the information or an accomplishment of the purposes for which the human trafficking counselor is consulted. It

includes all information regarding the facts and circumstances involving all incidences of human trafficking.

(E) As used in this article, 'holder of the privilege' means the victim when he has no guardian or conservator, or a guardian or conservator of the victim when the victim has a guardian or conservator.

Section 16-3-2160. (A) A person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of a trafficking victim, a trafficking shelter, a domestic violence shelter, or another place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking victim, trafficking shelter, or domestic violence shelter, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

(B) For purposes of this section:

(1) 'Domestic violence shelter' means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

(2) 'Trafficking shelter' means a confidential location which provides emergency housing for victims of human trafficking."

SECTION 2. Section 16-3-930 of the 1976 Code is repealed.

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. 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 5. This act takes effect upon approval by the Governor.

S. 1135 (HUTTO)

**A BILL** TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 19 TO CHAPTER 3, TITLE 16 SO AS TO DEFINE NECESSARY TERMS, PROVIDE FOR CERTAIN HUMAN TRAFFICKING OFFENSES AND PROVIDE PENALTIES, TO PROVIDE FOR CRIMINAL LIABILITY OF BUSINESS ENTITIES, TO PROVIDE RESTITUTION FOR VICTIMS OF HUMAN TRAFFICKING OFFENSES, TO ESTABLISH AN INTERAGENCY TASK FORCE TO DEVELOP AND IMPLEMENT A PLAN FOR THE PREVENTION OF TRAFFICKING IN PERSONS, TO ALLOW CIVIL ACTIONS BY VICTIMS OF HUMAN TRAFFICKING, TO PROVIDE CERTAIN PROTECTIONS FOR VICTIMS OF HUMAN TRAFFICKING PURSUANT TO THE VICTIMS' BILL OF RIGHTS AND OTHER RELEVANT STATUTORY PROVISIONS; AND TO REPEAL SECTION 16-3-930 RELATING TO TRAFFICKING IN PERSONS FOR FORCED LABOR OR SERVICES.

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

Whereas, an estimated twenty-seven million people are currently enslaved around the world; and

Whereas, the United States State Department estimates that between 14,000 and 17,000 people are trafficked into our borders each year; and

Whereas, crimes of this nature have occurred in Myrtle Beach, Charleston, Columbia, and Greenville, South Carolina; and

Whereas, it is our responsibility to protect our people, combat crime, and promote legislation to address this behavior throughout our State. Now, therefore,

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

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

"Article 19

Human Trafficking

Section 16-3-2010. (A) As used in this article:

- (1) 'Business' means a corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or self-employed individual.
- (2) 'Coercion' means:
  - (a) threats of serious harm to or physical restraint against a person;

(b) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against a person; or

(c) the abuse or threatened abuse of the legal process.

(3) 'Commercial sex act' means a sex act for which anything of value is given, promised to, or received, directly or indirectly, by another person.

(4) 'Debt bondage or coercion' means the status or condition of a debtor arising from a pledge by the debtor of his personal services or those of a person under his control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined or if the principal amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.

(5) 'Forced labor' means knowingly providing or obtaining the labor or services of a person:

(a) by threats of serious harm to, or physical restraint against, that person or another person; or

(b) by means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform that labor or services, that person or another person would suffer serious harm or physical restraint; or

(c) by means of the abuse or threatened abuse of law or the legal process.

This definition does not apply to labor or services performed or provided by a person in the custody of the Department of Corrections or a local jail, detention center, or correctional facility.

(6) 'Involuntary servitude' means a condition of servitude induced through:

(a) any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in this condition, that person or another person would suffer serious harm or physical restraint; or

(b) the abuse or threatened abuse of the legal process.

(7) 'Labor' means work of an economic or a financial value.

(8) 'Labor trafficking' means the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(9) 'Minor' means an individual who is under eighteen years of age.

(10) 'Person' means an individual, corporation, partnership, association, a government body, municipal corporation, or another legal entity.

(11) 'Sex act' means touching of the sexual or other intimate parts of another person for the purpose of gratifying the sexual desire of another person. It includes touching of the person as well as touching by the person, whether directly or through clothing.

(12) 'Sex trafficking' means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act, in which a commercial sex act is induced by force, fraud, or coercion, or in which the person forced to perform the act is under the age of eighteen years.

(13) 'Sexual battery' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when the intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(14) 'Sexually explicit performance' means an act or show intended to arouse, satisfy the sexual desires of, or appeal to the prurient interests of patrons or viewers, whether public or private, live, photographed, recorded, or videotaped.

(15) 'Services' means an act committed at the behest of, under the supervision of, or for the benefit of another person.

(16) 'Trafficking in persons' means

(a) sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform the act has not attained eighteen years of age; or

(b) the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(17) 'Victim of trafficking in persons' or 'victim' means a person who has been subjected to the crime of trafficking in persons, sexual servitude, or involuntary servitude.

(B) As used in this article and related to children and sex acts, the term:

(1) 'Performance' means any play, motion picture, photograph, dance, or other visual representation that is exhibited or may be exhibited or could be exhibited before an audience.

(2) 'Sexual conduct' means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.

(3) 'Sexual performance' means any performance or part of a performance that includes sexual conduct by a child younger than eighteen years of age.

Section 16-3-2020. (A) A trafficker who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, knowing that the victim will be

subjected to sexual servitude or involuntary servitude or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than thirty years.

(B) A trafficker who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a victim, for the purposes of a commercial sex act or sexually explicit performance through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in subsection (A), is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than thirty years.

(C) A trafficker who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a minor, knowing that the minor will be subjected to sexual servitude or involuntary servitude or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in this subsection, is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than thirty years.

(D) A trafficker who recruits, entices, solicits, isolates, harbors, transports, provides, or obtains, or so attempts, a minor, for the purposes of a commercial sex act or sexually explicit performance through any means or who benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in subsection (A), is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than thirty years.

(E) A trafficker who subjects, or attempts to subject, a victim to:

(1) a commercial sex act or sexually explicit performance; or

(2) labor or services through use of any of the following means:

(a) causing or threatening to cause serious harm to any person;

(b) physically restraining or threatening to physically restrain another person;

(c) abusing or threatening to abuse the law or legal process;

(d) knowingly destroying, concealing, removing, confiscating, or possessing an actual or purported passport or other immigration document, or another actual or purported government identification document, of the victim;

(e) extortion or blackmail;

(f) deception or fraud;

- (g) debt coercion;
  - (h) causing or threatening to cause financial harm to the victim;
  - (i) facilitating or controlling a victim's access to a controlled substance; or
  - (j) using any scheme, plan, or pattern, whether overt or subtle, intended to cause the victim to believe that if the victim did not perform the labor, services, acts or performances, that victim or another person would suffer serious harm or physical restraint, is guilty of a felony and, upon conviction, is subject to forfeiture of all assets obtained from the violation of this section and must be imprisoned not more than thirty years.
- (F) A person who aids, abets, or conspires with another person to violate the criminal provisions of this section must be punished in the same manner as provided for the principal offender and is considered a trafficker.
- (G) A business owner that participates in a violation of this article, upon conviction, must be imprisoned for not more than ten years in addition to the penalties provided in this section for each violation.
- (H) A plea of guilty or the legal equivalent entered pursuant to a provision of this article by an offender entitles the victim of trafficking in persons to all benefits, rights, and compensation granted pursuant to Section 16-3-1110.
- (I) In a prosecution of a person who is a victim of trafficking in persons, it is an affirmative defense that he was under duress or coerced into committing the offenses for which he is subject to prosecution, if the offenses were committed as a direct result of, or incidental or related to, being trafficked.
- (J) Evidence of the following facts or conditions do not constitute a defense in a prosecution for a violation of this article, nor does the evidence preclude a finding of a violation:
- (1) the trafficking victim's sexual history or history of commercial sexual activity, the specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct;
  - (2) the trafficking victim's connection by blood or marriage to a defendant in the case or to anyone involved in the victim's trafficking;
  - (3) the implied or express consent of a victim to acts which violate the provisions of this section do not constitute a defense to violations of this section;
  - (4) age of consent to sex, legal age of marriage, or other discretionary age; and
  - (5) mistake as to the victim's age, even if the mistake is reasonable.



Section 16-3-2030. (A) A business entity, including a corporation, partnership, association, government body, municipal corporation or another legal entity, that aids or participates in an offense provided in this article is criminally liable for the offense and will be subject to a fine when the proceeds are considered part of the forfeiture proceeds, loss of business license in the State, or both.

(B) If a business entity is convicted of violating a section of this article, the court or Secretary of State, when appropriate, may:

- (1) order its dissolution or reorganization;
- (2) order the suspension or revocation of any license, permit, or prior approval granted to it by a state or local government agency; or
- (3) order the surrender of its charter if it is organized under state law or the revocation of its certificate to conduct business in the State if it is not organized under state law.

Section 16-3-2040. (A) An offender convicted of a violation of this article must be ordered to pay mandatory restitution to the victim as provided in subsections (B) through (H).

(B) If the victim of trafficking dies as a result of being trafficked, a surviving spouse of the victim of trafficking is eligible for restitution. If no surviving spouse exists, restitution must be paid to the victim's issue or their descendants per stirpes. If no surviving spouse or issue or descendants exist, restitution must be paid to the victim's estate. A person named in this subsection may not receive funds from restitution if he benefited or engaged in conduct described in this article.

(C) If a person is unable at the time of sentencing or at any other time the court may set to pay a restitution charge imposed by the court pursuant to Sections 24-23-210 through 24-23-230, the restitution charge shall constitute a lien against the offender and against any real or personal property of the offender. A restitution charge does not constitute a lien if it is waived by the director pursuant to Section 24-23-210. This lien may be filed by the Attorney General in the respective offices of the clerks of court and registers of deeds of this State in the same manner state tax liens are filed and may be enforced and collected by the Attorney General in the same manner that state tax liens are enforced and collected.

(D) Restitution for this section, pursuant to Section 16-3-1270, means payment for all injuries, specific losses, and expenses sustained by a crime victim resulting from an offender's criminal conduct. It includes, but is not limited to:

- (1) medical and psychological counseling expenses;
- (2) specific damages and economic losses;
- (3) funeral expenses and related costs;

- (4) vehicle impoundment fees;
  - (5) child care costs; and
  - (6) transportation related to a victim's participation in the criminal justice process.
- (E) Restitution does not include awards for pain and suffering, wrongful death, emotional distress, or loss of consortium.
- (F) Restitution orders do not limit civil claims a crime victim may file.
- (G) Notwithstanding another provision of law, the applicable statute of limitations for a crime victim, who has a cause of action against an incarcerated offender based upon the incident which made the person a victim, is tolled and does not expire until three years after the offender's release from the sentence including probation and parole time or three years after release from commitment pursuant to Chapter 48, Title 44, whichever is later. However, this provision does not shorten any other tolling period of the statute of limitations which may exist for the crime victim.
- (H) Restitution must be paid to the victim promptly upon the conviction of the defendant. The return of the victim to his home country or other absence of the victim from the jurisdiction does not prevent the victim from receiving restitution.

Section 16-3-2050. All offenses pursuant to this article qualify as offenses subject to forfeiture and are subject to the provisions as provided by law.

- (1) The following are subject to forfeiture:
- (a) all monies used, or intended for use, in violation of this article;
  - (b) all property constituting the proceeds obtained directly or indirectly, for a violation of this article;
  - (c) all property derived from the proceeds obtained, directly or indirectly, from any sale or exchange for pecuniary gain from a violation of this article;
  - (d) all property used or intended for use, in any manner or part, to commit or facilitate the commission of a violation for pecuniary gain of this article;
  - (e) all books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or which have been positioned for use, in violation of this article;
  - (f) all conveyances including, but not limited to, trailers, aircraft, motor vehicles, and watergoing vessels, which are used or intended for use unlawfully to conceal or transport or facilitate a violation of this section. No motor vehicle may be forfeited to the State under this item unless it is used, intended for use, or in any manner facilitates a violation of this article;

(g) all property including, but not limited to, monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for any kind of services under this article, and all proceeds including, but not limited to, monies, and real and personal property traceable to any exchange;

(h) overseas assets of persons convicted of trafficking in persons also are subject to forfeiture to the extent they can be retrieved by the government.

(2) Any property subject to forfeiture under this article may be seized by the department having authority upon warrant issued by any court having jurisdiction over the property. Seizure without process may be made if the:

(a) seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) property subject to seizure has been the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding based upon this article;

(c) the department has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) the department has probable cause to believe that the property was used or is intended to be used in violation of this article.

(3) In the event of seizure pursuant to item (2), proceedings under this article regarding forfeiture and disposition must be instituted within a reasonable time.

(4) Any property taken or detained under this section is not subject to replevin but is considered to be in the custody of the department making the seizure subject only to the orders of the court having jurisdiction over the forfeiture proceedings. Property described in item (1) is forfeited and transferred to the government at the moment of illegal use. Seizure and forfeiture proceedings confirm the transfer.

(5) For the purposes of this article, whenever the seizure of property subject to seizure is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

(6) Law enforcement agencies seizing property pursuant to this article shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for security in another manner.

(7) When property and monies of any value as defined in this article or anything else of any value is seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecution agency.

(a) The report shall provide the following information with respect to the property seized:

- (i) description;
- (ii) circumstances of seizure;
- (iii) present custodian and where the property is being stored or its location;
- (iv) name of owner;
- (v) name of lienholder;
- (vi) seizing agency; and
- (vii) the type and quantity of the controlled substance involved.

(b) If the property is a conveyance, the report shall include the:

- (i) make, model, serial number, and year of the conveyance;
- (ii) person in whose name the conveyance is registered; and
- (iii) name of any lienholders.

(c) In addition to the report provided for in subitems (a) and (b), the law enforcement agency shall prepare for dissemination to the public upon request a report providing the following information:

- (i) a description of the quantity and nature of the property and money seized;
- (ii) the seizing agency;
- (iii) the type and quantity of the controlled substance involved;
- (iv) the make, model, and year of a conveyance; and
- (v) the law enforcement agency responsible for the property or conveyance seized.

(d) Property or conveyances seized by a law enforcement agency or department may not be used by officers for personal purposes.

Section 16-3-2060. (A) Forfeiture of property defined in Section 16-3-2050 must be accomplished by petition of the Attorney General or his designee or the circuit solicitor or his designee to the court of common pleas for the jurisdiction where the items were seized. The petition must be submitted to the court within a reasonable time period following seizure and shall provide the facts upon which the seizure was made. The petition shall describe the property and include the names of all owners of record and lienholders of record. The petition shall identify any other persons known to the petitioner to have interests in the property. Petitions for the forfeiture of conveyances also shall include the make, model, and year of the conveyance, the person in whose name the conveyance is registered, and the person who holds the title to the conveyance. The petition shall provide the type and quantity of the controlled substance involved. A copy of the petition must be sent to each law enforcement agency which has notified the petitioner of its involvement in effecting the seizure. Notice of hearing or rule to show cause must be directed to all persons with interests in the property listed in the petition, including law enforcement agencies which have notified the petitioner of their involvement in effecting the seizure. Owners of record and lienholders of record may be served by certified mail, to the last known address as appears in the records of the governmental agency which records the title or lien.

(B) The judge shall determine whether the property is subject to forfeiture and order the forfeiture confirmed. If the judge finds a forfeiture, he shall then determine the lienholder's interest as provided in this article. The judge shall determine whether any property must be returned to a law enforcement agency pursuant to this section.

(C) If there is a dispute as to the division of the proceeds of forfeited property among participating law enforcement agencies, this issue must be determined by the judge. The proceeds from a sale of property, conveyances, and equipment must be disposed of pursuant to this section.

(D) All property, conveyances, and equipment which will not be reduced to proceeds may be transferred to the law enforcement agency or agencies or to the prosecution agency. Upon agreement of the law enforcement agency or agencies and the prosecution agency, conveyances and equipment may be transferred to any other appropriate agency. Property transferred may not be used to supplant operating funds within the current or future budgets. If the property seized and forfeited is an aircraft or watercraft and is transferred to a state law enforcement agency or other state agency pursuant to the provisions of this subsection, its use and retainage by that agency is at the discretion and approval of the State Budget and Control Board.

(E) If a defendant or his attorney sends written notice to the petitioner or the seizing agency of his interest in the subject property, service may be made by mailing a copy of the petition to the address provided and service may not be made by publication. In addition, service by publication may not be used for a person incarcerated in a Department of Corrections facility, a county detention facility, or other facility where inmates are housed for the county where the seizing agency is located. The seizing agency shall check the appropriate institutions after receiving an affidavit of nonservice before attempting service by publication.

(F) Any forfeiture may be effected by consent order approved by the court without filing or serving pleadings or notices provided that all owners and other persons with interests in the property, including participating law enforcement agencies, entitled to notice under this section, except lienholders and agencies, consent to the forfeiture. Disposition of the property may be accomplished by consent of the petitioner and those agencies involved. Persons entitled to notice under this section may consent to some issues and have the judge determine the remaining issues.

(G) Disposition of forfeited property under this section must be accomplished as follows:

(1) Property forfeited under this subsection shall first be applied to payment to the victim. The return of the victim to his home country or other absence of the victim from the jurisdiction shall not prevent the victim from receiving compensation.

(2) The victim and South Carolina Victim's Compensation Fund shall each receive one-fourth and law enforcement shall receive one-half of the value of the forfeited property, unless item (3) applies, then each shall receive equally.

(3) If no victim is named, or reasonable attempts to locate a named victim for forfeiture and forfeiture fails, then all funds shall revert to the South Carolina Victim's Compensation Fund and law enforcement to be divided equally.

(4) If federal law enforcement becomes involved in the investigation, they shall equitably split the share local law enforcement receives under this article, if they request or pursue any of the forfeiture. The equitable split must be pursuant to 21 U.S.C. Section 881(e)(1)(A) and (e)(3), 18 U.S.C. Section 981(e)(2), and 19 U.S.C. Section 1616a.

Section 16-3-2070. (A) It is not necessary for the State to negate any exemption or exception provided in this article in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding pursuant to this article, and the burden of proof of any exemption or exception is upon the person claiming its benefit.

(B) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this article, he is presumed not to be the holder of the registration or form, and the burden of proof is upon him to rebut this presumption.

Section 16-3-2080. (A) An innocent owner, manager, or owner of a licensed rental agency or any common carrier or carrier of goods for hire may apply to the court of common pleas for the return of any item seized pursuant to the provisions of Section 16-3-2050. Notice of hearing or rule to show cause accompanied by copy of the application must be directed to all persons and agencies entitled to notice under Section 16-3-2060. If the judge denies the application, the hearing may proceed as a forfeiture hearing held pursuant to Section 16-3-2060.

(B) The court may return any seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

(1) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture; or

(2) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that any agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or owner, or any agents, servants, or employees of the rental agency, then it is presumed that the licensed rental agency was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(C) The lien of an innocent person or other legal entity, recorded in public records, shall continue in force upon transfer of title of any forfeited item, and any transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

Section 16-3-2090. A person who uses property or a conveyance in a manner which would make the property or conveyance subject to forfeiture as provided for in Section 16-3-2050 except for innocent owners, rental agencies, lienholders, and the like as provided for in this article, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not less than thirty days nor more than one year, fined not more than five thousand dollars, or both. The penalties prescribed in this section are cumulative and must be construed to be in addition to any other penalty prescribed by another provision of this article.

Section 16-3-2100. (A) The Attorney General shall establish an interagency task force to develop and implement a State Plan for the Prevention of Trafficking in Persons. The task force shall meet at least quarterly and should include all aspects of trafficking, including sex trafficking and labor trafficking of both United States citizens and foreign nationals, as defined in Section 16-3-2010. The Attorney General also shall collect and publish relevant data to this section on their website.

(B) The task force shall consist of, at a minimum, representatives from:

- (1) the Office of the Attorney General, who must be Chair;
- (2) the South Carolina Labor, Licensing and Regulation;
- (3) the South Carolina Police Chiefs Association;
- (4) the South Carolina Sheriffs' Association;

- (5) the State Law Enforcement Division;
  - (6) the Department of Health and Environmental Control Board;
  - (7) the United States Department of Labor;
  - (8) the State Office of Victim Assistance;
  - (9) the South Carolina Commission on Prosecution Coordination;
  - (10) the Department of Social Services; and
  - (11) persons the Attorney General shall appoint from nongovernmental organizations, especially those specializing in trafficking in persons, those representing diverse communities disproportionately affected by trafficking, agencies devoted to child services and runaway services, and academic researchers dedicated to the subject of human trafficking.
- (C) The Attorney General shall invite representatives of the United States Attorneys' offices and of federal law enforcement agencies' offices within the State, including the Federal Bureau of Investigations and the United States Immigration and Customs Enforcement office, to be members of the task force.
- (D) The task force shall carry out the following activities either directly or via one or more of its constituent agencies:
- (1) develop the state plan within eighteen months of the effective date of this act;
  - (2) coordinate the implementation of the state plan; and
  - (3) starting one year after the formation after the task force, submit an annual report of its findings and recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before December thirty-first of each calendar year.
- (F) The task force shall consider carrying out the following activities either directly or via one or more of its constituent agencies:
- (1) coordinate the collection and sharing of trafficking data among government agencies, which data collection must respect the privacy of victims of trafficking in persons;
  - (2) coordinate the sharing of information between agencies for the purposes of detecting criminal groups engaged in trafficking;
  - (3) explore the establishment of state policies for time limits for the issuance of Law Enforcement Agency (LEA) endorsements as described in C.F.R. Chapter 8, Section 214.11(f)(1);



- (4) establish policies to enable state government to work with nongovernmental organizations and other elements of civil society to prevent trafficking and provide assistance to United States citizens and foreign national victims;
- (5) review the existing services and facilities to meet trafficking victims' needs and recommend a system that would coordinate services including, but not limited to, health services, including mental health, housing, education and job training, English as a second language classes, interpreting services, legal and immigration services, and victim compensation;
- (6) evaluate various approaches used by state and local governments to increase public awareness of the trafficking in persons, including United States citizens and foreign national victims of trafficking in persons;
- (7) mandatory training for law enforcement agencies, prosecutors, and other relevant officials in addressing trafficking in persons;
- (8) collect and periodically publish statistical data on trafficking, that must be posted on the Attorney General's website;
- (9) prepare public awareness programs designed to educate potential victims of trafficking in persons and their families on the risks of victimization. These public awareness programs must include, but are not be limited to:
  - (a) information about the risks of becoming a victim, including information about common recruitment techniques, use of debt bondage, and other coercive tactics, risk of maltreatment, rape, exposure to HIV or AIDS and other sexually transmitted diseases, and psychological harm related to victimization in trafficking cases;
  - (b) information about the risks of engaging in commercial sex and possible punishment;
  - (c) information about victims' rights in the State;
  - (d) methods for reporting suspected recruitment activities; and
  - (e) information on hotlines and available victims' services; and
- (10) prepare and disseminate general public awareness materials to educate the public on the extent of trafficking in persons, both United States citizens and foreign nationals, within the United States and to discourage the demand that fosters the exploitation of persons that leads to trafficking.
  - (a) The general public awareness materials may include information on the impact of trafficking on individual victims, whether United States citizens or foreign nationals, aggregate information on trafficking worldwide and domestically, and warnings of the criminal consequences of engaging in trafficking. These materials may include pamphlets, brochures,

posters, advertisements in mass media, and other appropriate media. All materials must be designed to communicate to the target population.

(b) Materials described in this section may include information on the impact of trafficking on individual victims. However, information on the experiences of individual victims must preserve the privacy of the victim and the victim's family.

(c) All public awareness programs must be evaluated periodically by the task force to ensure their effectiveness.

Section 16-3-2110. (A) A person who is a victim of trafficking may bring a civil action in the court of common pleas. The court may award actual damages, compensatory damages, punitive damages, injunctive relief, and other appropriate relief. A prevailing plaintiff also must be awarded attorney's fees and costs. Treble damages must be awarded on proof of actual damages when the defendant's acts were wilful and malicious.

(B) Pursuant to Section 16-3-1110, the applicable statute of limitations for a crime victim, who has a cause of action against an incarcerated offender based upon the incident which made the person a victim, is tolled and does not expire until three years after the offender's release from the sentence including probation and parole time or three years after release from commitment pursuant to Chapter 48, Title 44, whichever is later. However, this provision does not shorten any other tolling period of the statute of limitations which may exist for the crime victim.

(C) A statute of limitation imposed for the filing of a civil suit does not start to run until a minor plaintiff has reached the age of majority.

(D) If a person entitled to sue is under a disability at the time the cause of action accrues, so that it is impossible or impractical for him to bring an action, then the time of the disability is not part of the time limited for the commencement of the action. Disability includes, but is not limited to, insanity, imprisonment, or other incapacity or incompetence.

(E) The running of the statute of limitations may be suspended where a person entitled to sue could not have reasonably discovered the cause of action due to circumstances resulting from the trafficking situation, such as psychological trauma, cultural and linguistic isolation, and the inability to access services.

(F) A defendant is estopped to assert a defense of the statute of limitations when the expiration of the statute is due to conduct by the defendant inducing the plaintiff to delay the filing of the action or placing the plaintiff under duress.

Section 16-3-2120. Investigative, prosecutorial, and other appropriate authorities shall interview all persons arrested on charges of prostitution and take all other steps necessary to identify victims of trafficking in persons, including United States citizens and foreign nationals. Once victims are identified, these authorities shall provide reasonable protection to victims of trafficking in persons, pursuant to Article 15, Chapter 3, Title 16.

Section 16-3-2130. (A) Victims of trafficking in persons pursuant to this article are considered victims for purposes of the Victims' Bill of Rights and are entitled to all appropriate forms of compensation available pursuant to the State Crime Victim's Compensation Fund in accordance with the provisions of Article 13, Chapter 3, Title 16. Victims of trafficking in persons pursuant to this article also are entitled to the rights provided in Article 15, Chapter 3, Title 16.

(B) In addition to the provisions of subsection (A), in a prosecution for violations of the criminal provisions of this article, the identity of the victim and the victim's family must be kept confidential by ensuring that names and identifying information of the victim and victim's family are not released to the public, including by the defendant.

(C) Pursuant to Section 16-3-1240, it is unlawful, except for purposes directly connected with the administration of the victim's compensation program, for any person to solicit, disclose, receive, or make use of or authorize, knowingly permit, participate in or acquiesce in the use of any list, or names of, or information concerning persons applying for or receiving awards without the written consent of the applicant or recipient. The records, papers, files, and communications of the board, its panel and the director and his staff must be regarded as confidential information and privileged and not subject to disclosure under the Freedom of Information Act as contained in Chapter 3, Title 30.

Section 16-3-2140. (A) For purposes of this section:

(1) 'Domestic violence shelter' means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

(2) 'Trafficking shelter' means a confidential location which provides emergency housing for victims of human trafficking.

(3) 'Grounds' means the real property of the parcel of land upon which a domestic violence or trafficking shelter or a domestic violence or trafficking shelter's administrative offices are located, whether fenced or unfenced.

(B) A person who maliciously or with criminal negligence publishes, disseminates, or otherwise discloses the location of a trafficking victim, a trafficking shelter, a domestic violence shelter, or another place designated as a trafficking shelter or domestic violence shelter, without the authorization of that trafficking victim, trafficking shelter, or domestic violence shelter, is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years.

(C) It is unlawful for a person who has been charged with or convicted of a violation of Section 16-3-2020 to enter or remain upon the grounds or structure of a domestic violence or trafficking shelter in which the victim resides or the domestic violence shelter's administrative offices or the trafficking shelter's administrative offices.

(D) The domestic violence shelter and trafficking shelter must post signs at conspicuous places on the grounds of the domestic violence shelter, trafficking shelter, the domestic violence shelter's administrative offices, and the trafficking shelter's administrative offices which, at a minimum, must read substantially as follows: 'NO TRESPASSING-VIOLATORS WILL BE SUBJECT TO CRIMINAL PENALTIES'.

(E) This section does not apply if the person has legitimate business or any authorization, license, or invitation to enter or remain upon the grounds or structure of the domestic violence or trafficking shelter or the domestic violence or trafficking shelter's administrative offices.

(F) A person who violates this section 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."

SECTION 2. Section 16-3-930 of the 1976 Code is repealed.

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. 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 5. This act takes effect one hundred eighty days after approval by the Governor.

**INCREASE FUNDING FOR LAW ENFORCEMENT AND PROSECUTION-**