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CHAPTER 8.

 OFFENSES PROMOTING CIVIL DISORDER

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 16‑8‑10.** Definitions.

As used in this chapter:

(1) “Bacteriological weapon” and “biological weapon” mean devices which are designed in a manner as to permit the intentional release into the population or environment of microbiological or other biological materials, toxins, or agents, whatever their origin or method of production, in a manner not authorized by law, or any device, the development, production, or stockpiling of which is prohibited pursuant to the “Convention of the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction”, 26 U.S.T. 583, TIAS 8063.

(2) “Bomb” includes a destructive device capable of being detonated, triggered, or set off to release any substance or material that is destructive, irritating, odoriferous, or otherwise harmful to one or more organisms including, but not limited to, human beings, livestock, animals, crops or vegetation, or to earth, air, water, or any other material or substance necessary or required to sustain human or any other individual form of life, or to real or personal property.

(3) “Civil disorder” means a public disturbance involving acts of violence by three or more persons which causes an immediate danger of or results in damage or injury to another person or his property.

(4) “Destructive device” means:

(a) a bomb, incendiary device, or any thing that can detonate, explode, be released, or burn by mechanical, chemical, or nuclear means, or that contains an explosive, incendiary, poisonous gas, or toxic substance (chemical, biological, or nuclear materials) including, but not limited to, an incendiary or over‑pressure device, or any other device capable of causing damage, injury, or death;

(b) a bacteriological weapon or biological weapon; or

(c) a combination of any parts, components, chemical compounds, or other substances, either designed or intended for use in converting any device into a destructive device which has been or can be assembled to cause damage, injury, or death.

(5) “Device” means an object, contrivance, instrument, technique, or means that is designed, manufactured, assembled, or capable of serving any purpose in a bomb, destructive device, explosive, incendiary, or weapon of mass destruction.

(6) “Explosive” means a chemical compound or other substance or a mechanical system intended for the purpose of producing an explosion capable of causing injury, death, or damage to property or one containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonation may produce an explosion capable of causing injury, death, or damage to property. Explosives include, but are not limited to, the list of explosive materials published and periodically updated by the Bureau of Alcohol, Tobacco and Firearms.

(7) “Firearm” means a weapon which is designed to or readily may be converted to expel a projectile by the action of an explosive, or the frame or receiver of that weapon.

(8) “Incendiary” means any material that:

(a) causes, or is capable of causing, fire when it is lit or ignited; and

(b) is used to ignite a flammable liquid or compound in an unlawful manner.

(9) “Incendiary device” means a destructive device, however possessed or delivered, and by whatever name called, containing or holding a flammable liquid or compound, which is capable of being ignited by any means possible. Incendiary device includes, but is not limited to, any form of explosive, explosive bomb, grenade, missile, or similar device, whether capable of being carried or thrown by a person acting alone or with one or more persons, but does not include a device manufactured or produced for the primary purpose of illumination or for marking detours, obstructions, defective paving, or other hazards on streets, roads, highways, or bridges, when used in a lawful manner.

(10) “Law enforcement officer” means:

(a) an officer or employee of the United States, a state, political subdivision of a state, or the District of Columbia, who is authorized to enforce laws and is acting within his official capacity;

(b) members of the National Guard;

(c) members of the organized militia of a state or territory;

(d) members of the Armed Forces of the United States.

(11) “Over‑pressure device” means a container filled with an explosive gas or expanding gas or liquid which is designed or constructed so as to cause the container to break, fracture, or rupture in such a manner which is capable of causing death, bodily harm, or property damage, and includes, but is not limited to, a chemical reaction bomb, an acid bomb, a caustic bomb, or a dry ice bomb.

(12) “Parts” means a combination of parts, components, chemical compounds, or other substances, designed or intended for use in converting any device into a destructive device.

(13) “Poisonous gases” means a toxic chemical or its precursors that through its chemical action or properties on life processes, causes death or injury to human beings or other living organisms. Poisonous gases do not include:

(a) riot control agents, smoke and obscuration materials, or medical products which are manufactured, possessed, transported, or used in accordance with the laws of this State or the United States;

(b) tear gas devices designed to be carried on or about the person which contain not more than fifty cubic centimeters of the chemical; or

(c) pesticides, as used in agriculture and household products.

(14) “Weapon of mass destruction” means:

(a) any destructive device as defined in item (4);

(b) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(c) any weapon involving a disease organism; or

(d) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

**SECTION 16‑8‑20.** Teaching or demonstrating use of or making of destructive device; penalties.

(A) A person may not:

(1) teach or demonstrate to another person the use, application, or making of a firearm or destructive device which is capable of causing injury or death if the person knows, has reason to know, or intends that what is taught or demonstrated will be employed unlawfully for use in, or in furtherance of, a civil disorder; nor

(2) assemble with one or more persons for the purpose of training, practicing, or instructing in the use of a firearm or destructive device which is capable of causing injury or death to persons if the training, practice, or instruction is used in furtherance of an unlawful purpose or a civil disorder.

(B) A person who violates the provisions of subsection (A) is guilty of a felony and, upon conviction:

(1) for a first offense must be fined not more than five thousand dollars or imprisoned for not more than five years, or both;

(2) for a second or subsequent offense must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.

**SECTION 16‑8‑30.** Exceptions.

Nothing contained in this chapter prohibits:

(1) an act of a law enforcement officer performed within his official capacity;

(2) training for law enforcement officers conducted by or for an agency or a political subdivision of a state or an agency of the United States;

(3) activities of the National Guard or of the armed forces of the United States; or

(4) classes intended to teach the safe handling of legal firearms for hunting, recreation, competition, or self‑defense.

ARTICLE 3.

 CRIMINAL GANG PREVENTION ACT

**SECTION 16‑8‑210.** Citation of article.

This article may be cited as the “Criminal Gang Prevention Act”.

**SECTION 16‑8‑230.** Definitions.

As used in this article:

(1) “Contraband” means any real or personal property, including money, that is owned by, in the possession of, or subject to the control of a criminal gang member and which is acquired by, derived from, or traceable to criminal gang activity.

(2) “Criminal gang” means a formal or informal ongoing organization, association, or group that consists of five or more persons who form for the purpose of committing criminal activity and who knowingly and actively participate in a pattern of criminal gang activity.

(3) “Criminal gang member” means an individual who is an active member of a criminal gang.

(4) “Pattern of criminal gang activity” means the commission or attempted commission of, commission as an accessory before or after the fact to, or solicitation or conspiracy to commit, by a criminal gang member, while knowingly and actively participating in criminal gang activity, four or more of the following offenses occurring within a two‑year period, provided that at least three of these offenses occurred after July 1, 2007:

(a) a violent offense as defined in Section 16‑1‑60 committed as a part of criminal gang activity;

(b) financial transaction card crimes as defined in Chapter 14 of Title 16 committed as a part of criminal gang activity;

(c) first degree lynching as defined in Section 16‑3‑210 committed as a part of criminal gang activity;

(d) second degree lynching as defined in Section 16‑3‑220 committed as a part of criminal gang activity;

(e) breaking into a motor vehicle as defined in Section 16‑13‑160 committed as a part of criminal gang activity;

(f) grand larceny as defined in Section 16‑13‑30 committed as a part of criminal gang activity;

(g) blackmail as defined in Section 16‑17‑640 committed as a part of criminal gang activity;

(h) malicious injury to property as defined in Sections 16‑11‑510, 16‑11‑520, 16‑11‑530, and 16‑11‑535 committed as a part of criminal gang activity;

(i) drug offense as defined in Sections 44‑53‑370 and 44‑53‑375 committed as a part of criminal gang activity;

(j) harassment, stalking, or aggravated stalking as defined in Article 17, Chapter 3 of Title 16 committed as a part of criminal gang activity;

(k) pointing a firearm at any person as defined in Section 16‑23‑410 committed as a part of criminal gang activity;

(l) discharging a firearm at or into dwellings, structures, enclosures, vehicles, or equipment as defined in Section 16‑23‑440 committed as a part of criminal gang activity;

(m) the common law offense of assault and battery of a high and aggravated nature committed as a part of criminal gang activity; or

(n) the common law offense of obstruction of justice committed as a part of criminal gang activity.

(5) “Gang‑related incident” means an incident that, upon investigation, meets any of the following conditions:

(a) the participants are identified as criminal gang members acting collectively to further a criminal purpose of the criminal gang;

(b) a reliable informant identifies an incident as criminal gang activity based upon first‑hand knowledge or personal observation; or

(c) a person other than a reliable informant provides information that identifies an incident as criminal gang activity, and it is corroborated by independent information.

**SECTION 16‑8‑240.** Use of or threat of physical violence by criminal gang member; penalties.

(A) It is unlawful for a criminal gang member to use or threaten to use physical violence against another person with the intent to coerce, induce, or solicit that person or another person to actively participate in criminal gang activity, or to prevent another criminal gang member from withdrawing from or leaving a criminal gang. A criminal gang member who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction for a first offense, must be fined not more than one thousand dollars or imprisoned not more than two years, or both. A criminal gang member convicted for a second or subsequent offense pursuant to this subsection 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.

(B) A criminal gang member who uses a firearm, any other deadly weapon, or physical violence to coerce, induce, or solicit another person to actively participate in a criminal gang, or to prevent another criminal gang member from withdrawing or leaving a criminal gang, in addition to the punishment prescribed in subsection (A), may be punished by an additional fine of not more than ten thousand dollars or by imprisonment for an additional period of not more than ten years, or both.

(C) If the person solicited, recruited, coerced, or threatened in violation of this section is under the age of eighteen, an additional term of three years may be imposed in addition and consecutive to the penalty prescribed for a violation of this section.

(D) A person who has been coerced, intimidated, threatened, or injured in violation of this section has a civil cause of action against a criminal gang or criminal gang member violating this section for treble the amount of the actual damages, for punitive damages, an injunction, and any other appropriate relief in law or equity. Upon prevailing in the civil action, the plaintiff may recover reasonable attorney’s fees and costs from the criminal gang or criminal gang member.

(E) Nothing in this section limits prosecution under any other provision of law.

**SECTION 16‑8‑250.** Preventing witness or victim from testifying; penalty; coerced person’s right to bring civil action.

(A) It is unlawful for a criminal gang member by threat or force to:

(1) prevent a witness or victim from attending or giving testimony at a trial, proceeding, or inquiry authorized by law that concerns or relates to any criminal activity; or

(2) attempt to prevent a witness or victim from attending or giving testimony at a trial, proceeding, or inquiry authorized by law that concerns or relates to any criminal activity.

(B) A criminal gang member who violates a provision of this section is guilty of a felony and, upon conviction, must be punished by a fine of not more than ten thousand dollars or imprisoned for not more than ten years, or both.

(C) A person who has been coerced, intimidated, threatened, or injured in violation of this section has a civil cause of action against a criminal gang or criminal gang member violating this section for treble the amount of his actual damages, for punitive damages, an injunction, and any other appropriate relief in law or equity. Upon prevailing in the civil action, the plaintiff may recover reasonable attorney’s fees and costs from the criminal gang or criminal gang member.

(D) Nothing in this section limits prosecution under any other provision of law.

**SECTION 16‑8‑260.** Seizure of firearms, ammunition, electronic records, money, etc.; forfeiture actions.

(A)(1) Any firearm, ammunition to be used in a firearm, or dangerous weapon in the possession of a member of a criminal gang may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the firearm, ammunition to be used in a firearm, or dangerous weapon is or has been used in a pattern of criminal gang activity or in the commission of a criminal act for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(2) Any written or electronic communications, records, money, negotiable instruments, or valuables may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the written or electronic communications, records, money, negotiable instruments, or valuables have been used in a pattern of criminal gang activity or have been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(3) Any contraband, as defined in Section 16‑8‑230, or other asset owned or titled in the name of the gang or an individual gang member may be seized by a law enforcement officer or agency when the law enforcement officer or agency reasonably believes that the contraband or asset has been used in a pattern of criminal gang activity or has been used for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(B) The solicitor or another prosecuting attorney shall initiate, in a civil action, forfeiture proceedings by petition in a court of competent jurisdiction regarding any property seized pursuant to the provisions of this section within ninety days of seizure. The solicitor or another prosecuting attorney must provide notice of the filing of the petition to those criminal gang members who become known to law enforcement officials as a result of the seizure and any related arrests, and to any person learned by law enforcement officials to be the owner of any of the property involved. After initial notice of the filing of the petition, the court must ensure that all persons so notified continue to receive notice of all subsequent proceedings related to the property.

(C) A person who claims an interest in any seized property, in order to assert a claim that the property should not be forfeited, must file a notice with the court, without the necessity of paying costs, of the intent to establish either of the following:

(1) that the person asserting the claim did not know and could not have known of the property’s use in the commission of a pattern of criminal gang activity or in furthering the interests of the criminal gang; or

(2) that the law enforcement officer lacked the requisite reasonable belief that the property was or would be used in the commission of a pattern of criminal gang activity or in furtherance of the interests of the criminal gang.

(D) In any hearings held and determinations made, pursuant to this section, the court may receive and consider, in making a determination of reasonable cause, all evidence admissible in determining reasonable or probable cause at a preliminary hearing together with inferences arising from the evidence presented.

(E) An acquittal or dismissal in a criminal proceeding must not preclude civil proceedings under this section. However, for good cause shown, on motion by the solicitor or another prosecuting attorney, the court may stay civil forfeiture proceedings during the criminal trial for a related criminal indictment or information alleging a violation of this section. A stay is not available pending an appeal.

(F) Except as otherwise provided by this section, all proceedings under this section are governed according to the common law, by statutory provisions relating to civil remedies and procedures, and the rules of civil procedure established for the circuit court. Additionally, any action under the provisions of this section may be consolidated with any other action or proceeding pursuant to this section relating to the same property on motion of the solicitor or prosecuting attorney.

(G) The forfeiture provided for in this section must be decided by the court. The hearing on the claim must be held within sixty days after service of the petition, unless continued for good cause. The solicitor or prosecuting attorney has the burden of proof to establish by a preponderance of the evidence that the property is subject to forfeiture.

(H) A person who asserts a successful claim in accordance with subsection (C) must be awarded the seized property by the court. All property to which no claim is filed, or to which no successful claim is made may be destroyed, sold at a public or private sale, retained for use by the seizing agency, or transferred without charge to any law enforcement agency of the State for use by the agency.

**SECTION 16‑8‑270.** Civil cause of action in favor of State of South Carolina or political entity; actions for injunction; venue; service of process.

(A) A civil cause of action is created in favor of the State of South Carolina, a county, municipality, or another political subdivision, or an agency or instrumentality of them, that sustains any damage, impairment, or injury proximately caused by a pattern of criminal gang activity as defined in this article, or the commission of a criminal act for the purpose of benefiting, promoting, or furthering the interests of a criminal gang. The cause of action created by this section may be brought against a criminal gang, a criminal gang member, or any other person who intentionally directs, participates, conducts, furthers, or assists in the commission of a pattern of criminal gang activity, or any other person who commits a criminal act or delinquency for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.

(B) Except as provided in this section, an action for injunction, damages, or other relief filed pursuant to this section must proceed according to the common law, statutory provisions relating to civil remedies and procedures, and the rules of civil procedure established for the circuit court.

(C) For purposes of venue, an action under this section for the recovery of damages may be brought in the county where the wrongful conduct occurred, or in the county where the damages were sustained. An action to enjoin the commission of an offense or an unlawful act may be brought in the county where the wrongful conduct occurred or may occur. For purposes of service of process, service of process upon a member of a criminal gang or a person representing a criminal gang member by appointment of court, operation of law, or mandate constitutes adequate service upon a criminal gang.

**SECTION 16‑8‑280.** Identity of informant exempt from disclosure.

In all civil actions brought under the provisions of this article, the identity of an informant, identifying information relating to an informant, and all matters exempt from disclosure under Chapter 4, Title 30, the Freedom of Information Act, are exempt from discovery or disclosure under the rules of civil procedure.

**SECTION 16‑8‑290.** Notification of police or sheriff of release of criminal gang member from prison.

When a criminal gang member is released from the custody of a jail, prison, or corrections facility, and the criminal gang member was in the custody of the jail, prison, or corrections facility for a violation of the provisions of this article, the jail, prison, or corrections facility must transmit notice of the release of the criminal gang member to the sheriff of the county in which the crime was committed. Notice also must be given to a sheriff that the criminal gang member is being released and has provided an address within the jurisdiction of that sheriff for the county in which the criminal gang member intends to reside. If the crime was committed in a municipality, or if the criminal gang member will reside in a municipality upon release, that law enforcement agency must transmit the same notice to the chiefs of police of those municipalities.

**SECTION 16‑8‑310.** Local ordinances.

Nothing in this article prohibits the governing body of a county, a municipality, or another political subdivision of the State from adopting and enforcing ordinances consistent with this article relating to criminal gangs, criminal gang members, and gang violence. When local ordinances duplicate or supplement this article, this article provides alternative remedies.

**SECTION 16‑8‑320.** Access to and maintenance of records of criminal gang activity.

The State Law Enforcement Division must include the Violent Gang and Terrorist Organization File of the Federal Bureau of Investigation’s National Crime Information Center among those National Crime Information Center data available for direct access by authorized criminal justice agencies. State, county, and municipal law enforcement agencies must maintain a record of all persons who are found to be criminal gang members in the Violent Gang and Terrorist Organization File in accordance with the National Crime Information Center entry criteria. All gang‑related incidents must be appropriately annotated in the South Carolina Incident‑Based Reporting System pursuant to the intent and purpose of this article.

**SECTION 16‑8‑330.** Development and management of statewide criminal gang database.

(A) Pursuant to achieving the intent and purpose of this article, the State Law Enforcement Division must develop and manage a statewide criminal gang database to facilitate the exchange of information between federal, state, county, and municipal law enforcement agencies pursuant to the intent and purpose of this article.

(B) All state, county, and municipal law enforcement agencies must furnish information they acquire relating to criminal gangs and gang‑related incidents to the State Law Enforcement Division to be included in the database.

(C) The State Law Enforcement Division may determine if information relating to criminal gangs, gang‑related incidents, patterns of gang activity, or members or associates of criminal gangs received from federal law enforcement agencies and law enforcement agencies of other states is to be included in the database.

(D) Criminal information relating to a criminal gang and collected pursuant to this article must be consistent with the criteria required on the effective date of this act by the Violent Gang and Terrorist Organization File of the Federal Bureau of Investigation’s National Crime Information Center. The State Law Enforcement Division is authorized pursuant to the Administrative Procedures Act in Chapter 23, Title 1:

(1) to promulgate emergency regulations to make the criteria effective for collection of database information until such time as permanent regulations are promulgated and affirmatively approved by the General Assembly;

(2) to promulgate permanent regulations consistent with the criteria required on the effective date of this act, which are to be affirmatively approved by the General Assembly, and to amend those regulations to reflect changes made in the criteria; and

(3) to promulgate permanent regulations concerning the punishment associated with intentional misuse of the database.

(E) Information relating to a person who does not have a criminal arrest record and is not a member of a criminal gang must be used only for intelligence, investigative, and tracking purposes.

(F) The information contained in this database is not subject to the provisions of the Freedom of Information Act.

**SECTION 16‑8‑340.** Community anti‑gang matching grants program.

There is established in the appropriate office of the State Budget and Control Board a Community Safety Anti‑Gang Matching Grants program to provide funding for local programs to prevent youth idleness and intervene with at‑risk youth. These grants may be awarded to counties and municipalities upon application for after school programs, summer youth employment programs, and police and sheriff anti‑gang task forces. Grants must be awarded on a two‑for‑one matching basis with the local match component consisting of cash. Grant applications must be reviewed and rated by the Governor’s Committee on Criminal Justice, Crime, and Delinquency, but responsibility for the award of grants is solely with the board. Funding for these grants must be in the amount as the General Assembly shall provide by law.