**A** **BILL**

TO ENACT THE SOUTH CAROLINA REDUCTION OF RECIDIVISM ACT OF 2009, SO AS TO PROVIDE LAW ENFORCEMENT OFFICERS WITH THE STATUTORY AUTHORITY TO REDUCE RECIDIVISM RATES, APPREHEND CRIMINALS AND PROTECT POTENTIAL VICTIMS FROM CRIMINAL ENTERPRISES BY AUTHORIZING WARRANTLESS SEARCHES AND SEIZURES OF PROBATIONERS AND PAROLEES; TO AMEND SECTION 20‑7‑8305, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE BOARD OF JUVENILE PAROLE, SO AS TO PROVIDE THAT BEFORE A JUVENILE MAY BE CONDITIONALLY RELEASED, THE JUVENILE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 20‑7‑8320, RELATING TO CONDITIONAL RELEASE, SO AS TO PROVIDE THAT THE JUVENILE MUST BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24‑19‑110, RELATING TO THE PROCEDURE FOR CONDITIONAL RELEASE OF YOUTHFUL OFFENDERS, SO AS TO PROVIDE THAT BEFORE A YOUTHFUL OFFENDER MAY BE CONDITIONALLY RELEASED, THE YOUTHFUL OFFENDER MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24‑13‑710, RELATING TO THE GUIDELINES, ELIGIBILITY CRITERIA, AND IMPLEMENTATION OF A SUPERVISED FURLOUGH PROGRAM, SO AS TO PROVIDE THAT BEFORE AN INMATE MAY BE RELEASED ON SUPERVISED FURLOUGH, THE INMATE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24‑13‑720, RELATING TO INMATES WHO MAY BE PLACED WITHIN CERTAIN PROGRAMS, SO AS TO PROVIDE THAT BEFORE AN INMATE MAY BE RELEASED ON SUPERVISED FURLOUGH, THE INMATE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24‑13‑1330, RELATING TO A COURT INMATE’S AGREEMENT TO TERMS AND CONDITIONS, SO AS TO PROVIDE THAT BEFORE AN INMATE MAY BE RELEASED ON PAROLE, THE INMATE MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; TO AMEND SECTION 24‑21‑410, RELATING TO THE COURT BEING AUTHORIZED TO SUSPEND IMPOSITION OF SENTENCE FOR PROBATION AFTER CONVICTION, SO AS TO PROVIDE THAT BEFORE A DEFENDANT MAY BE PLACED ON PROBATION, THE DEFENDANT MUST AGREE TO BE SUBJECT TO SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT BASED ON REASONABLE SUSPICIONS; TO AMEND SECTION 24‑21‑430, RELATING TO THE CONDITIONS OF PROBATION, SO AS TO PROVIDE THAT THE CONDITIONS IMPOSED MUST INCLUDE THE REQUIREMENT THAT THE PROBATIONER MUST PERMIT SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT BASED ON REASONABLE SUSPICIONS; TO AMEND SECTION 24‑21‑560, RELATING TO COMMUNITY SUPERVISION PROGRAMS, SO AS TO PROVIDE THAT THE CONDITIONS OF PARTICIPATION MUST INCLUDE THE REQUIREMENT THAT THE OFFENDER MUST PERMIT SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT BASED ON REASONABLE SUSPICIONS; TO AMEND SECTION 24‑21‑640, RELATING TO THE CIRCUMSTANCES WARRANTING PAROLE, SO AS TO PROVIDE THAT BEFORE AN INMATE MAY BE RELEASED ON PAROLE, THE INMATE MUST AGREE TO SEARCH AND SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE; AND TO AMEND SECTION 24‑21‑645, RELATING TO THE ORDER AUTHORIZING PAROLE, SO AS TO PROVIDE THAT THE CONDITIONS OF PAROLE MUST INCLUDE THE REQUIREMENT THAT THE PAROLEE MUST PERMIT SEARCH OR SEIZURE WITH OR WITHOUT A SEARCH WARRANT AND WITH OR WITHOUT CAUSE.

Whereas, as held by the United States Supreme Court in Samson v. California, 547 U.S. 843 (2006), warrantless and suspicionless searches of probationers and parolees are a legitimate state interest due to the fact that they are persons more likely to commit future criminal offenses; and

Whereas, as held by the United States Supreme Court in Samson v. California, 547 U.S. 843 (2006), parolees have fewer expectations of privacy than probationers because parole is more akin to imprisonment than probation; and

Whereas, as held by the United States Supreme Court in United States v. Knights, 534 U.S. 112 (2001), probationers do not enjoy the absolute liberty of other citizens; and

Whereas, as held by the United States Supreme Court in United States v. Knights, 534 U.S. 112 (2001), warrantless searches of probationers are allowed if based on reasonable suspicions; and

Whereas, the United States Supreme Court has noted, in Ewing v. California, 538 U.S. 11 (2003), that recidivism is a grave concern throughout the nation; and

Whereas, the Untied States Supreme Court has held in numerous cases that the Fourth Amendment does not render the states powerless to effectively address concerns for protecting people from criminal activity. Now, therefore,

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

SECTION 1. This act may be cited as the “South Carolina Reduction of Recidivism Act of 2009”. It is the intent of the General Assembly of South Carolina to provide law enforcement officers with the statutory authority to reduce recidivism rates of probationers and parolees, apprehend criminals, and protect potential victims from criminal enterprises.

SECTION 2. Section 20‑7‑8305(A)(1) of the 1976 Code is amended to read:

“(A)(1) The Board of Juvenile Parole shall meet monthly and at other times as may be necessary to review the records and progress of children committed to the custody of the Department of Juvenile Justice for the purpose of deciding the release or revocation of release of these children. The parole board shall make periodic inspections, at least quarterly, of the records of persons committed to the custody of the Department of Juvenile Justice and may issue temporary and final discharges or release these persons conditionally and prescribe conditions for release into aftercare. Before a juvenile is conditionally released, the juvenile must agree in writing to be subject to search or seizure, with or without a search warrant and with or without cause, of the juvenile’s person, residence, any vehicle the juvenile owns or drives, and any of the juvenile’s possessions by: (1) the juvenile’s aftercare counselor; (2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (3) any other law enforcement officer. A juvenile must not be conditionally released by the parole board if he fails to comply with this provision.”

SECTION 3. Section 20‑7‑8320(A) of the 1976 Code is amended to read:

“(A) A juvenile who shall have been conditionally released from a correctional facility shall remain under the authority of the parole board until the expiration of the specified term imposed in the juvenile’s conditional aftercare release. The specified period of conditional release may expire before but not after the twenty‑first birthday of the juvenile. Each juvenile conditionally released is subject to the conditions and restrictions of the release and may at any time on the order of the parole board be returned to the custody of a correctional institution for violation of aftercare rules or conditions of release. The conditions of release must include the requirement that the juvenile parolee must permit the search or seizure, with or without a search warrant and with or without cause of the juvenile parolee’s person, residence, any vehicle the juvenile parolee owns or drives, and any of the juvenile parolee’s possessions by: (1) his aftercare counselor; (2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (3) any other law enforcement officer. By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.”

SECTION 4. Section 24‑19‑110 of the 1976 Code is amended to read:

“Section 24‑19‑110. The division may at any time after reasonable notice to the director release conditionally under supervision a committed youthful offender. Before a youthful offender may be conditionally released, the youthful offender must agree in writing to be subject to search or seizure, with or without a search warrant and with or without cause of the youthful offender’s person, residence, any vehicle the youthful offender owns or drives, and any of the youthful offender’s possessions by: (1) his supervisory agent; (2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (3) any other law enforcement officer. A youthful offender must not be conditionally released by the division if he fails to comply with this provision. When, in the judgment of the director, a committed youthful offender should be released conditionally under supervision, he shall so report and recommend to the division. The conditions of release must include the requirement that the youthful offender must permit the search or seizure, with or without a search warrant and with or without cause, of the youthful offender’s person, residence, any vehicle the youthful offender owns or drives, and any of the youthful offender’s possessions by: (1) his supervisory agent; (2) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (3) any other law enforcement officer. By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.

The division may regularly assess a reasonable fee to be paid by the youthful offender who is on conditional release to offset the cost of his supervision.

The division may discharge a committed youthful offender unconditionally at the expiration of one year from the date of conditional release.”

SECTION 5. Section 24‑13‑710 of the 1976 Code is amended to read:

“Section 24‑13‑710. The Department of Corrections and the Department of Probation, Parole~~,~~ and Pardon Services shall jointly develop the policies, procedures, guidelines, and cooperative agreement for the implementation of a supervised furlough program that permits carefully screened and selected inmates who have served the mandatory minimum sentence as required by law or have not committed a violent crime as defined in Section 16‑1‑60, a ‘no parole offense’ as defined in Section 24‑13‑100, the crime of criminal sexual conduct in the third degree as defined in Section 16‑3‑654, or the crime of committing or attempting a lewd act upon a child under the age of fourteen as defined in Section 16‑15‑140 to be released on furlough prior to parole eligibility and under the supervision of state probation and parole agents with the privilege of residing in an approved residence and continuing treatment, training, or employment in the community until parole eligibility or expiration of sentence, whichever is earlier.

Before an inmate may be released on supervised furlough, the inmate must agree in writing to be subject to search or seizure, with or without a search warrant and with or without cause of the inmate’s person, residence, any vehicle the inmate owns or drives, and any of the inmate’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. An inmate must not be granted supervised furlough if he fails to comply with this provision.

The department and the Department of Probation, Parole~~,~~ and Pardon Services shall assess a fee sufficient to cover the cost of the participant’s supervision and any other financial obligations incurred because of his participation in the supervised furlough program as provided by this article. The two departments shall jointly develop and approve written guidelines for the program to include, but not be limited to, the selection criteria and process, requirements for supervision, conditions for participation, and removal.

The conditions for participation must include the requirement that the offender must permit the search or seizure, with or without a search warrant and with or without cause, of the offender’s person, residence, any vehicle the offender owns or drives, and any of the offender’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.

The cooperative agreement between the two departments shall specify the responsibilities and authority for implementing and operating the program. Inmates approved and placed on the program must be under the supervision of agents of the Department of Probation, Parole~~,~~ and Pardon Services who are responsible for ensuring the inmate’s compliance with the rules, regulations, and conditions of the program as well as monitoring the inmate’s employment and participation in any of the prescribed and authorized community‑based correctional programs such as vocational rehabilitation, technical education, and alcohol/drug treatment. Eligibility criteria for the program include, but are not limited to, all of the following requirements:

(1) maintain a clear disciplinary record for at least six months prior to consideration for placement on the program;

(2) demonstrate to Department of Corrections’ officials a general desire to become a law‑abiding member of society;

(3) satisfy any other reasonable requirements imposed upon him by the Department of Corrections;

(4) have an identifiable need for and willingness to participate in authorized community‑based programs and rehabilitative services;

(5) have been committed to the State Department of Corrections with a total sentence of five years or less as the first or second adult commitment for a criminal offense for which the inmate received a sentence of one year or more. The Department of Corrections shall notify victims pursuant to Article 15, Chapter 3, Title 16 as well as the sheriff’s office of the place to be released before releasing inmates through any supervised furlough program. These requirements do not apply to the crimes referred to in this section.”

SECTION 6. Section 24‑13‑720 of the 1976 Code is amended to read:

“Section 24‑13‑720. Unless sentenced to life imprisonment, an inmate under the jurisdiction or control of the Department of Corrections who has not been convicted of a violent crime under the provisions of Section 16‑1‑60 or a ‘no parole offense’ as defined in Section 24‑13‑100 may, within six months of the expiration of his sentence, be placed with the program provided for in Section 24‑13‑710 and is subject to every rule, regulation, and condition of the program. Before an inmate may be released on supervised furlough, the inmate must agree in writing to be subject to search or seizure, with or without a search warrant and with or without cause, of the inmate’s person, residence, any vehicle the inmate owns or drives, and any of the inmate’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. An inmate must not be granted supervised furlough if he fails to comply with this provision.

The conditions for participation must include the requirement that the offender must permit the search and seizure with or without a search warrant and with or without cause of the inmate’s person, residence, any vehicle the inmate owns or drives, and any of the inmate’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.

No inmate otherwise eligible under the provisions of this section for placement with the program may be so placed unless he has qualified under the selection criteria and process authorized by the provisions of Section 24‑13‑710. He must also have maintained a clear disciplinary record for at least six months prior to eligibility for placement with the program.”

SECTION 7. Subsections (D) and (E) of Section 24‑13‑1330 of the 1976 Code are amended to read:

“(D) An applicant may not participate in a program unless he agrees to be bound by all of its terms and conditions and indicates this agreement by signing the following:

‘I accept the foregoing program and agree to be bound by its terms and conditions. I understand that my participation in the program is a privilege that may be revoked at the sole discretion of the director. I understand that I shall complete the entire program successfully to obtain a certificate of earned eligibility upon the completion of the program, and if I do not complete the program successfully, for any reason, I will be transferred to a nonshock incarceration correctional facility to continue service of my sentence.’

Before an inmate may be released on parole, the inmate must agree in writing to be subject to search or seizure, with or without a search warrant and with or without cause, of the inmate’s person, residence, any vehicle the inmate owns or drives, and any of the inmate’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. A shock incarceration inmate must not be granted parole release by the department if he fails to comply with this provision.

(E) An inmate who has completed a shock incarceration program successfully is eligible to receive a certificate of earned eligibility and must be granted parole release~~.~~ if the inmate has executed the agreements described in subsection (D) of this section. The conditions of parole must include the requirement that the parolee must permit the search or seizure, with or without a search warrant and with or without cause, of the parolee’s person, residence, any vehicle the parolee owns or drives, and any of the parolee’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.”

SECTION 8. Section 24‑21‑410 of the 1976 Code is amended to read:

“Section 24‑21‑410. After conviction or plea for any offense, except a crime punishable by death or life imprisonment, the judge of a court of record with criminal jurisdiction at the time of sentence may suspend the imposition or the execution of a sentence and place the defendant on probation or may impose a fine and also place the defendant on probation. Probation is a form of clemency. Before a defendant may be placed on probation, he must agree in writing to be subject to a search or seizure, with or without a search warrant, based on reasonable suspicion of the law enforcement officer or the probation officer of the defendant’s person, residence, any vehicle the defendant owns or drives, and any of the defendant’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. A defendant must not be placed on probation by the court if he fails to comply with this provision and instead shall be required to serve the suspended portion of the defendant’s sentence.”

SECTION 9. The first unnumbered paragraph of Section 24‑21‑430 of the 1976 Code is amended to read:

“Section 24‑21‑430. The court may impose by order duly entered and may at any time modify the conditions of probation and may include among them any of the following or any other condition not prohibited in this section~~.~~ ; however, the conditions imposed must include the requirement that the probationer must permit the search or seizure, with or without a search warrant, based on reasonable suspicions of the probationer’s person, residence, any vehicle the probationer owns or drives, and any of the probationer’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.

To effectively supervise probationers, the director shall develop policies and procedures for imposing conditions of supervision on probationers. These conditions may enhance but must not diminish court imposed conditions.”

SECTION 10. Section 24‑21‑560(B) of the 1976 Code is amended to read:

“(B) A community supervision program operated by the Department of Probation, Parole~~,~~ and Pardon Services must last no more than two continuous years. The period of time a prisoner is required to participate in a community supervision program and the individual terms and conditions of a prisoner’s participation shall be at the discretion of the department based upon guidelines developed by the director~~.~~; however, the conditions of participation must include the requirement that the offender must permit the search or seizure, with or without a search warrant, based on reasonable suspicions of the law enforcement officer or the probation officer of the offender’s person, residence, any vehicle the offender owns or drives, and any of the offender’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.

A prisoner participating in a community supervision program must be supervised by a probation agent of the department. The department must determine when a prisoner completes a community supervision program, violates a term of community supervision, fails to participate in a program satisfactorily, or whether a prisoner should appear before the court for revocation of the community supervision program.”

SECTION 11. Section 24‑21‑640 of the 1976 Code is amended to read:

“Section 24‑21‑640. The board must carefully consider the record of the prisoner before, during, and after imprisonment, and no such prisoner may be paroled until it appears to the satisfaction of the board: that the prisoner has shown a disposition to reform; that, in the future he will probably obey the law and lead a correct life; that by his conduct he has merited a lessening of the rigors of his imprisonment; that the interest of society will not be impaired thereby; and, that suitable employment has been secured for him.

Before an inmate may be released on parole, he must agree in writing to be subject to search or seizure, with or without a search warrant and with or without cause, of the inmate’s person, residence, any vehicle the inmate owns or drives, and any of the inmate’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. An inmate must not be granted parole release by the board if he fails to comply with this provision.

The board must establish written, specific criteria for the granting of parole and provisional parole. This criteria must reflect all of the aspects of this section and include a review of a prisoner’s disciplinary and other records. The criteria must be made available to all prisoners at the time of their incarceration and the general public. The paroled prisoner must, as often as may be required, render a written report to the board giving that information as may be required by the board which must be confirmed by the person in whose employment the prisoner may be at the time. The board must not grant parole nor is parole authorized to any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a prior conviction, for violent crimes as defined in Section 16‑1‑60. Provided that where more than one included offense shall be committed within a one‑day period or pursuant to one continuous course of conduct, such multiple offenses must be treated for purposes of this section as one offense.

Any part or all of a prisoner’s in‑prison disciplinary records and, with the prisoner’s consent, records involving all awards, honors, earned work credits and educational credits, are subject to the Freedom of Information Act as contained in Chapter 4 of Title 30.”

SECTION 12. Section 24‑21‑645 of the 1976 Code is amended to read:

“Section 24‑21‑645. The board may issue an order authorizing the parole which must be signed either by a majority of its members or by all three members meeting as a parole panel on the case ninety days prior to the effective date of the parole; however, at least two‑thirds of the members of the board must authorize and sign orders authorizing parole for persons convicted of a violent crime as defined in Section 16‑1‑60. A provisional parole order shall include the terms and conditions, if any, to be met by the prisoner during the provisional period and terms and conditions, if any, to be met upon parole.

The conditions of parole must include the requirement that the parolee must permit the search or seizure, with or without a search warrant and with or without cause, of the parolee’s person, residence, any vehicle the parolee owns or drives, and any of the parolee’s possessions by: (1) any probation agent employed by the Department of Probation, Parole and Pardon Services; or (2) any other law enforcement officer. By enacting this provision, the General Assembly intends to provide law enforcement with a means of reducing recidivism and does not authorize law enforcement officers to conduct searches for the sole purpose of harassment.

Upon satisfactory completion of the provisional period, the director or one lawfully acting for him must issue an order which, if accepted by the prisoner, shall provide for his release from custody. However, upon a negative determination of parole, prisoners in confinement for a violent crime as defined in Section 16‑1‑60 must have their cases reviewed every two years for the purpose of a determination of parole, except that prisoners who are eligible for parole pursuant to Section 16‑25‑90, and who are subsequently denied parole must have their cases reviewed every twelve months for the purpose of a determination of parole. This section applies retroactively to a prisoner who has had a parole hearing pursuant to Section 16‑25‑90 prior to the effective date of this act.”

SECTION 13. The repeal or amendment by the provisions 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 14. If any section, subsection, item, subitem, 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, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 15. This act takes effect upon approval by the Governor.

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