**South Carolina General Assembly**

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**S. 810**

**STATUS INFORMATION**

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Summary: Mi-Chanda's Law

**HISTORY OF LEGISLATIVE ACTIONS**

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1/9/2012 Senate Referred to Subcommittee: Hutto (ch), Rose, Shoopman

**VERSIONS OF THIS BILL**

[4/13/2011](file:///p:\pprever\2011-12\810_20110413.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ENACTING “MI-CHANDA’S LAW” SO AS TO AMEND SECTION 16‑25‑10, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE DEFINITION OF “HOUSEHOLD MEMBER” IN CONNECTION WITH CRIMINAL DOMESTIC VIOLENCE OFFENSES, SO AS TO INCLUDE PERSONS IN A DATING RELATIONSHIP AND TO DEFINE “DATING RELATIONSHIP”; TO AMEND SECTION 16-25-20, AS AMENDED, RELATING TO CRIMINAL DOMESTIC VIOLENCE OFFENSES, PENALTIES, AND PROSECUTION, SO AS TO REQUIRE THESE OFFENDERS TO COMPLETE A PROGRAM DESIGNED TO TREAT BATTERERS; TO AMEND SECTION 16-25-65, AS AMENDED, RELATING TO CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, SO AS TO REQUIRE THESE OFFENDERS TO COMPLETE A PROGRAM DESIGNED TO TREAT BATTERERS; TO AMEND SECTION 20‑4‑20, AS AMENDED, RELATING TO THE DEFINITION OF TERMS IN THE “PROTECTION FROM DOMESTIC ABUSE ACT”, SO AS TO REVISE THE DEFINITION OF “HOUSEHOLD MEMBER” TO INCLUDE PERSONS IN A DATING RELATIONSHIP AND TO DEFINE “DATING RELATIONSHIP”; TO AMEND SECTION 20‑4‑40, AS AMENDED, RELATING TO THE PETITION FOR AN ORDER OF PROTECTION, SO AS TO PROVIDE THAT A PARENT OR GUARDIAN MAY PETITION THE COURT FOR AN ORDER ON BEHALF OF A MINOR WHO IS IN A DATING RELATIONSHIP; AND TO AMEND SECTION 20‑4‑60, AS AMENDED, RELATING TO THE CONTENTS OF AN ORDER OF PROTECTION, SO AS TO REQUIRE THE ORDER TO INCLUDE THE DOMESTIC VIOLENCE HOTLINE TELEPHONE NUMBER FOR THE COUNTY OF THE PETITIONER, TO PROVIDE THAT COUNSELING IS AVAILABLE AT ALL DOMESTIC VIOLENCE CENTERS AND PROGRAMS IN THE STATE, AND TO AUTHORIZE THE COURT TO ORDER A RESPONDENT IN A PROCEEDING TO COMPLETE A BATTERER TREATMENT PROGRAM AND TO ORDER OTHER PROHIBITIONS OR REQUIREMENTS NECESSARY TO PROTECT THE ABUSED PERSON.

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

SECTION 1. This act may be cited as “Mi‑chanda’s Law”.

SECTION 2. Section 16‑25‑10 of the 1976 Code, as last amended by Act 166 of 2005, is further amended to read:

“Section 16‑25‑10. As used in this article, ‘household member’ means:

(1) a spouse;

(2) a former spouse;

(3) persons who have a child in common; ~~or~~

(4) a male and female who are cohabiting or formerly have cohabited; or

(5) a person who is presently in or in the past has been in a dating relationship. For purposes of this section, ‘dating relationship’ means a romantic or intimate social relationship between two individuals, which must be determined by examining these factors:

(a) the length of the relationship;

(b) the type of the relationship; and

(c) the frequency of interaction between the two individuals involved in the relationship.

A ‘dating relationship’ does not include a casual relationship or ordinary fraternization between two individuals in a business or social context.”

SECTION 3. Section 16‑25‑20(B)(D),(F), and (H) of the 1976 Code, as last amended by Act 255 of 2008, are further amended to read:

“(B) Except as otherwise provided in this section, a person who violates the provisions of subsection (A) is guilty of the offense of criminal domestic violence and, upon conviction, must be punished as follows:

(1) for a first offense, the person is guilty of a misdemeanor and must be fined not less than one thousand dollars ~~nor~~ and not more than two thousand five hundred dollars or imprisoned not more than thirty days and must complete a program designed to treat batterers, in accordance with subsection (H). The court may suspend the imposition or execution of all or part of the fine conditioned upon the offender completing the program, to the satisfaction of the court~~, and in accordance with the provisions of Section 16‑25‑20(H), a program designed to treat batterers~~. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, and 22‑3‑550, an offense pursuant to the provisions of this subsection must be tried in summary court;

(2) for a second offense, the person is guilty of a misdemeanor and must be fined not less than two thousand five hundred dollars ~~nor~~ and not more than five thousand dollars and imprisoned not less than a mandatory minimum of thirty days nor more than one year and must complete a program designed to treat batterers, in accordance with subsection (H). The court may suspend the imposition or execution of all or part of the sentence, except the thirty‑day mandatory minimum sentence, conditioned upon the offender completing the program, to the satisfaction of the court~~, and in accordance with the provisions of Section 16‑25‑20(H), a program designed to treat batterers~~. If a person is sentenced to a mandatory minimum of thirty days pursuant to the provisions of this subsection, the judge may provide that the sentence be served two days during the week or on weekends until the sentence is completed and is eligible for early release based on credits he is able to earn during the service of his sentence, including, but not limited to, good‑time credits;

(3) for a third or subsequent offense, the person is guilty of a felony and must be imprisoned not less than a mandatory minimum of one year ~~but~~ and not more than five years and must complete a program designed to treat batterers, in accordance with subsection (H).

(D) A person who violates the terms and conditions of an order of protection issued in this State under Chapter 4, Title 20, the “Protection from Domestic Abuse Act”, or a valid protection order related to domestic or family violence issued by a court of another state, tribe, or territory is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days and fined not more than five hundred dollars and must complete a program designed to treat batterers, in accordance with subsection (H).

(F) When a person is convicted of a violation of Section 16‑25‑65 or sentenced pursuant to subsection (C), the court may suspend execution of all or part of the sentence, except for the mandatory minimum sentence, and place the offender on probation, conditioned upon:

(1) the offender completing, to the satisfaction of the court, ~~a~~ the program designed to treat batterers required pursuant to this section;

(2) fulfillment of all the obligations arising under court order pursuant to this section and Section 16‑25‑65; and

(3) other reasonable terms and conditions of probation as the court may determine necessary to ensure the protection of the victim.

(H) ~~An offender who participates in a~~ The batterer treatment program required to be completed by an offender pursuant to this section, must participate in a program offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services. The offender must pay a reasonable fee for participation in the treatment program but no person may be denied treatment due to inability to pay. If the offender suffers from a substance abuse problem, the judge may order, or the batterer treatment program may refer, the offender to supplemental treatment coordinated through the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to Section 61‑12‑20. The offender must pay a reasonable fee for participation in the substance abuse treatment program, but no person may be denied treatment due to inability to pay.”

SECTION 4. Section 16‑25‑65(B) of the 1976 Code, as last amended by Act 166 of 2006, is further amended to read:

“(B) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be imprisoned not less than a mandatory minimum of one year ~~nor~~ and not more than ten years and must complete a program designed to treat batterers offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services. The court may suspend the imposition or execution of all or part of the sentence, except the one‑year mandatory minimum sentence, ~~and place the offender on probation conditioned~~ upon the offender completing, to the satisfaction of the court, ~~a~~ the program designed to treat batterers ~~offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services~~. The offender must pay a reasonable fee for participation in the treatment program, but no person may be denied treatment due to inability to pay. If the offender suffers from a substance abuse problem, the judge may order, or the batterer treatment program may refer, the offender to supplemental treatment coordinated through the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to Section 61‑12‑20. The offender must pay a reasonable fee for participation in the substance abuse treatment program, but no person may be denied treatment due to inability to pay.”

SECTION 5. Section 20‑4‑20 of the 1976 Code, as last amended by Act 166 of 2005, is further amended to read:

“Section 20‑4‑20. As used in this chapter:

(a) ‘Abuse’ means:

(1) Physical harm, bodily injury, assault, or the threat of physical harm;

(2) Sexual criminal offenses, as otherwise defined by statute, committed against a family or household member by a family or household member;

(b) ‘Household member’ means:

(i) a spouse;

(ii) a former spouse;

(iii) persons who have a child in common;

(iv) a male and female who are cohabiting or formerly have cohabited;

(v) a person who is presently in or in the past has been in a dating relationship.

(c) ‘Dating relationship’ means a romantic or intimate social relationship between two individuals, which must be determined by examining these factors:

(i) the length of the relationship;

(ii) the type of the relationship; and

(iii) the frequency of interaction between the two individuals involved in the relationship.

A ‘dating relationship’ does not include a casual relationship or ordinary fraternization between two individuals in a business or social context.

(c) ‘Court’ means the family court.

(d) ‘Petitioner’ means the person alleging abuse in a petition for an order of protection.

(e) ‘Respondent’ in a petition for an order of protection means the person alleged to have abused another or a person alleged to have aided and abetted ~~such~~ the abuse.

(f) ‘Order of protection’ means an order of protection issued to protect the petitioner or minor household members from the abuse of another household member ~~where~~ if the respondent has received notice of the proceedings and has had an opportunity to be heard.”

SECTION 6. Section 20‑4‑40(a) of the 1976 Code, as last amended by Act 519 of 1994, is further amended to read:

“(a) A petition for relief under this section may be made by any household members in need of protection ~~or~~, by any household members on behalf of minor household members, or by a parent or guardian on behalf of a minor who is in a dating relationship.”

SECTION 7. Section 20‑4‑60(B) of the 1976 Code, as last amended by Act 319 of 2008, is further amended by adding an appropriately numbered item at the end to read:

“( ) ‘The Domestic Abuse Hotline serving County \_\_\_\_\_\_ is\_\_\_\_\_\_\_\_. By calling this number you can receive assistance and information about domestic violence services in your area. Counseling is available at all domestic violence centers and programs in this State’.

The Department of Social Services shall provide the family court, for distribution to each judicial circuit, a list of the domestic violence hotline numbers that serve each county. The department shall provide updated information to the family court if this information changes. The court shall include the applicable hotline member in the order of protection for the petitioner.”

SECTION 8. Section 20‑4‑60(C) of the 1976 Code, as last amended by Act 319 of 2008, is further amended to read:

“(C) ~~When~~ If the court has, after a hearing for any order of protection, issued an order of protection, it may, in addition:

(1) award temporary custody and temporary visitation rights with regard to minor children living in the home over whom the parties have custody;

(2) direct the respondent to pay temporary financial support for the petitioner and minor child unless the respondent has no duty to support the petitioner or minor child;

(3) when the respondent has a legal duty to support the petitioner or minor children living in the household and the household’s residence is jointly leased or owned by the parties or the respondent is the sole owner or lessee, grant temporary possession to the petitioner of the residence to the exclusion of the respondent;

(4) prohibit the transferring, destruction, encumbering, or otherwise disposing of real or personal property mutually owned or leased by the parties or in which one party claims an equitable interest, except when in the ordinary course of business;

(5) provide for temporary possession of the personal property of the parties and order assistance from law enforcement officers in removing personal property of the petitioner if the respondent’s eviction has not been ordered;

(6) award costs and attorney’s fees to either party;

(7) order the respondent to complete a batterer treatment program offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services;

(8) order any additional prohibitions or requirements the court considers necessary to protect a household member;

(9) award any other relief authorized by Section 63‑3‑530; ~~provided,~~ however, the court must have due regard for any prior family court orders issued in an action between the parties.”

SECTION 9. The repeal or amendment by this act of any law, whether temporary or permanent, 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 expressly so provides. 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 10. 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 severability, 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 11. This act takes effect upon approval by the Governor.

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