COMMITTEE REPORT

May 14, 2014

**S. 440**

Introduced by Senators Fair, Hutto and Jackson

S. Printed 5/14/14--H.

Read the first time March 4, 2014.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 440) to amend the Code of Laws of South Carolina, 1976, by adding Section 63‑19‑1435 so as to provide that the use of restraints on juveniles appearing, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by adding an appropriately numbered SECTION at the end to read:

/SECTION \_\_. Article 5, Chapter 13, Title 24 of the 1976 Code is amended by adding:

“Section 24-13-425. (A) For the purposes of this section:

(1) ‘Electronic monitoring device’ includes any device ordered by a court or pursuant to any statute that is utilized to track the location of a person.

(2) ‘Person’ includes any public or private agency or entity providing electronic monitoring services.

(B) It is unlawful for any person to knowingly and without authority remove, destroy, or circumvent the operation of an electronic monitoring device which is being used for the purpose of monitoring a person who is:

(1) complying with the Home Detention Act as set forth in Article 15 of Title 24;

(2) wearing an electronic monitoring device as a condition of bond or pretrial release;

(3) wearing an electronic monitoring device as a condition of probation, parole, or community supervision; or

(4) wearing an electronic monitoring device as required by any other provision of law.

(C) It shall be unlawful for any person to knowingly and without authority request or solicit any other person to remove, destroy, or circumvent the operation of an electronic monitoring device which is being used for the purposes described in subsection (B).

(D) Any person who violates the provisions of this section shall be guilty of the misdemeanor offense of tampering with the operation of an electronic monitoring device and shall be imprisoned for not more than three years, or fined up to three thousand dollars, or both.” /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 63‑19‑1435 SO AS TO PROVIDE THAT THE USE OF RESTRAINTS ON JUVENILES APPEARING IN COURT ARE PROHIBITED UNLESS THE RESTRAINTS ARE NECESSARY TO PREVENT HARM OR IF THE JUVENILE IS A FLIGHT RISK AND THERE ARE NO LESS RESTRICTIVE ALTERNATIVES AVAILABLE; TO GIVE A JUVENILE’S ATTORNEY THE RIGHT TO BE HEARD BEFORE THE COURT ORDERS THE USE OF RESTRAINTS; AND IF RESTRAINTS ARE ORDERED, TO REQUIRE THE COURT TO MAKE FINDINGS OF FACT IN SUPPORT OF THE ORDER.

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

SECTION 1. Article 13, Chapter 19, Title 63 of the 1976 Code is amended by adding:

“Section 63‑19‑1435. (A) If a juvenile appears before the court wearing instruments of restraint, such as handcuffs, chains, irons, or straightjackets, the court in any proceeding may not continue with the juvenile required to wear instruments of restraint unless the court first finds that:

(1) the use of restraints is necessary due to one of the following factors:

(a) the juvenile poses a threat of serious harm to himself or others;

(b) the juvenile has a demonstrable recent record of disruptive courtroom behavior that has placed others in potentially harmful situations; or

(c) there is reason to believe the juvenile is a flight risk; and

(2) there are no less restrictive alternatives to restraints that will prevent flight or physical harm to the juvenile or another person, including, but not limited to, court personnel, law enforcement officers, or bailiffs.

(B) The court shall provide the juvenile’s attorney an opportunity to be heard before the court orders the use of restraints. If restraints are ordered, the court shall make findings of fact in support of the order.”

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

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