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**S. 58**

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**VERSIONS OF THIS BILL**

[12/12/2018](file:///p:\pprever\2019-20\58_20181212.docx)

**A** **BILL**

TO AMEND SECTION 16-3-20 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, RELATING TO HOMICIDE, TO REMOVE THE PENALTY OF DEATH AS A PUNISHMENT FOR A PERSON CONVICTED OF MURDER, TO REMOVE THE REQUIREMENTS FOR THE IMPLEMENTATION OF THE DEATH PENALTY, TO REMOVE THE REQUIRED PROCEDURES FOR A DEATH PENALTY TRIAL, TO REMOVE DESIGNATED AGGRAVATING AND MITIGATING CIRCUMSTANCES USED TO ENHANCE THE PENALTY TO DEATH, TO REMOVE JURY INSTRUCTION REQUIREMENTS AND THE PROCEDURES FOR APPEALS, AND TO MAKE OTHER CONFORMING CHANGES; TO AMEND SECTION 16-3-655 TO REMOVE THE PENALTY OF DEATH AS A PUNISHMENT FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR WHO IS LESS THAN ELEVEN YEARS OF AGE, SECOND OFFENSE, TO REMOVE THE REQUIREMENTS FOR THE IMPLEMENTATION OF THE DEATH PENALTY, TO REMOVE THE REQUIRED PROCEDURES FOR A DEATH PENALTY TRIAL, TO REMOVE DESIGNATED AGGRAVATING AND MITIGATING CIRCUMSTANCES USED TO ENHANCE THE PENALTY TO DEATH, TO REMOVE JURY INSTRUCTION REQUIREMENTS AND THE PROCEDURES FOR APPEALS, AND TO MAKE OTHER CONFORMING CHANGES; TO AMEND SECTION 10-11-325 TO REMOVE THE PENALTY OF DEATH AS A PUNISHMENT FOR THE USE OF AN EXPLOSIVE DEVICE ON THE CAPITOL GROUNDS RESULTING IN DEATH; TO AMEND SECTION 16-23-490 TO REMOVE THE REFERENCE TO THE DEATH PENALTY AS AN EXEMPTION TO THE FIVE YEAR CONSECUTIVE PENALTY FOR DISPLAYING A FIREARM IN THE COMMISSION OF A VIOLENT CRIME; TO AMEND SECTION 16-23-715 TO REMOVE THE PENALTY OF DEATH FOR A PERSON CONVICTED OF USE OF A WEAPON OF MASS DESTRUCTION IN FURTHERANCE OF AN ACT OF TERRORISM; TO AMEND SECTION 16-23-720 TO REMOVE THE PENALTY OF DEATH FOR A PERSON CONVICTED OF INTENTIONAL USE OF A DESTRUCTIVE DEVICE; TO AMEND SECTION 1-7-100 TO REMOVE THE OBLIGATION OF THE ATTORNEY GENERAL TO ASSIST SOLICITORS BY ATTENDING THE GRAND JURY IN CAPITAL CASES; TO AMEND SECTION 17-3-330 TO DELETE THE REQUIREMENT THAT THE OFFICE OF INDIGENT DEFENSE ROLL OVER UNEXPENDED FUNDS INTO A FUND FOR THE DEFENSE OF CAPITAL CASES; TO AMEND SECTION 17-3-520 TO REMOVE THE REQUIREMENT THAT A CIRCUIT PUBLIC DEFENDER BE CERTIFIED TO DEFEND CAPITAL CASES AND TO REMOVE THE REQUIREMENT THAT THE CIRCUIT PUBLIC DEFENDER MUST ESTABLISH PROCEDURES FOR ASSIGNING COUNSEL IN CAPITAL CASES; TO AMEND SECTION 17-17-10 TO REMOVE REFERENCES TO SOMEONE CHARGED WITH A FELONY PUNISHABLE BY DEATH RELATING TO THE ENTITLEMENT OF A WRIT OF HABEAS CORPUS; TO AMEND SECTION 17-25-45 TO REMOVE REFERENCES TO CASES INVOLVING THE DEATH PENALTY RELATING TO THE SENTENCING OF SERIOUS AND MOST SERIOUS OFFENSES; TO AMEND SECTION 17-27-130 TO REMOVE THE REQUIREMENT THAT COUNSEL FOR A DEFENDANT SENTENCED TO DEATH MUST MAINTAIN HIS FILES EXCEPT FOR THAT WHICH WAS ADMITTED INTO EVIDENCE AT TRIAL; TO AMEND SECTION 17-27-150 TO REMOVE THE PROVISION THAT A PARTY IN A CAPITAL POST CONVICTION RELIEF PROCEEDING IS ENTITLED TO DISCOVERY; TO AMEND SECTION 18-1-90 REMOVE THE REFERENCE TO DEFENDANTS SENTENCED TO DEATH FOR THE EXCLUSION OF THE RIGHT OF A DEFENDANT FOR BAIL; TO AMEND SECTION 22-5-310 TO REMOVE THE REFERENCE TO THE EXCEPTION OF CAPITAL CASES RELATING TO THE JURISDICTION OF MAGISTRATES; TO AMEND SECTION 24-3-40 TO REMOVE THE REFERENCE TO A PRISONER SENTENCED TO DEATH RELATING TO THE RIGHT TO HAVE PRISONER’S ESCROWED WAGES DISTRIBUTED TO THE PERSON OF HIS CHOICE; TO AMEND SECTIONS 24-13-125, 24-13-150, AND 24-21-560 TO REMOVE THE EXCEPTION OF DEATH PENALTY CASES IN REGARDS TO THE ELIGIBILITY OF WORK RELEASE, EARLY RELEASE, DISCHARGE, OR COMMUNITY SUPERVISION FOR INMATES IN THE DEPARTMENT OF CORRECTIONS; TO AMEND SECTION 25-7-40 TO REMOVE THE PENALTY OF DEATH FOR SOMEONE WHO, DURING TIMES OF WAR, COLLECTS, RECORDS, OR ATTEMPTS TO ELICIT CERTAIN MILITARY INFORMATION OR PLANS WITH THE INTENT TO COMMUNICATE THE INFORMATION TO THE ENEMY; TO REPEAL SECTION 1-7-340 RELATING TO THE ATTENDANCE AT INQUESTS AND PRELIMINARY HEARINGS IN CAPITAL CASES BY SOLICITORS; TO REPEAL SECTION 16-3-21 RELATING TO JURY INSTRUCTIONS IN CAPITAL CASES; TO REPEAL SECTION 16-3-25 RELATING TO THE REVIEW OF DEATH PENALTY CASES BY THE SUPREME COURT; TO REPEAL SECTION 16-3-26 RELATING TO THE APPOINTMENT OF COUNSEL FOR INDIGENT DEFENDANTS IN CASES WHERE THE DEATH PENALTY IS SOUGHT AND THE PAYMENT OF COSTS AND EXPENSES BY THE OFFICE OF INDIGENT DEFENSE; TO REPEAL SECTION 16-3-28 RELATING TO THE RIGHT OF A CAPITAL DEFENDANT TO HAVE LAST ARGUMENT AT TRIAL; TO REPEAL SECTION 17-19-80 RELATING TO THE RIGHT OF A PERSON INDICTED FOR A CAPITAL OFFENSE TO HAVE A COPY OF THE INDICTMENT; TO REPEAL SECTION 17-25-370 RELATING TO THE EXECUTION OF THE DEATH SENTENCE UPON AFFIRMANCE OF JUDGEMENT OR DISMISSAL OR ABANDONMENT OF APPEAL; TO REPEAL SECTION 17-25-380 RELATING TO THE NOTICE FOR THE IMPOSITION OF THE SENTENCE OF DEATH SENT TO THE DIRECTOR OF THE DEPARTMENT OF CORRECTIONS; TO REPEAL SECTION 17-25-390 RELATING TO THE RECEIPT OF THE NOTICE OF THE IMPOSITION OF THE SENTENCE OF DEATH; TO REPEAL SECTION 17-25-400 RELATING TO THE SERVICE OF NOTICE OF THE IMPOSITION OF THE SENTENCE OF DEATH ON THE DEFENDANT; TO REPEAL SECTION 17-27-160 RELATING TO POST-CONVICTION RELIEF PROCEDURES FOR CAPITAL CASES; TO REPEAL SECTION 18-9-20 RELATING TO REQUIREMENT THAT THE SUPREME COURT REVIEW THE CONVICTION OF EACH CAPITAL CASE; TO REPEAL SECTION 24-21-615 RELATING TO THE REVIEW OF PRISONER BENEFITS FOR PERSONS CONVICTED OF A CAPITAL OFFENSE BY THE PAROLE BOARD; AND TO REPEAL ARTICLE 5, CHAPTER 3, TITLE 24 RELATING TO THE REQUIREMENTS OF THE IMPOSITION OF A DEATH SENTENCE BY THE DEPARTMENT OF CORRECTIONS, INCLUDING PROCEDURES, POSSIBLE WITNESSES TO THE EXECUTION, PAYMENT OF EXPENSES, AND THE DISPOSITION OF THE BODY.

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

SECTION 1. Section 16-3-20 of the 1976 Code is amended to read:

“Section 16‑3‑20. ~~(A)~~ 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. ~~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 commutee 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)~~ ~~When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant of murder, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. If no statutory aggravating circumstance is found, the defendant must be sentenced to either life imprisonment or a mandatory minimum term of imprisonment for thirty years to life. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty‑four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pleaded guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only such evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the State of South Carolina or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.~~

~~(C)~~ ~~The judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:~~

~~(a)~~ ~~Statutory aggravating circumstances:~~

~~(1)~~ ~~The murder was committed while in the commission of the following crimes or acts:~~

~~(a)~~ ~~criminal sexual conduct in any degree;~~

~~(b)~~ ~~kidnapping;~~

~~(c)~~ ~~trafficking in persons;~~

~~(d)~~ ~~burglary in any degree;~~

~~(e)~~ ~~robbery while armed with a deadly weapon;~~

~~(f)~~ ~~larceny with use of a deadly weapon;~~

~~(g)~~ ~~killing by poison;~~

~~(h)~~ ~~drug trafficking as defined in Section 44‑53‑370(e), 44‑53‑375(B), 44‑53‑440, or 44‑53‑445;~~

~~(i)~~ ~~physical torture;~~

~~(j) dismemberment of a person; or~~

~~(k)~~ ~~arson in the first degree as defined in Section 16‑11‑110(A).~~

~~(2)~~ ~~The murder was committed by a person with a prior conviction for murder.~~

~~(3)~~ ~~The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.~~

~~(4)~~ ~~The offender committed the murder for himself or another for the purpose of receiving money or a thing of monetary value.~~

~~(5)~~ ~~The murder of a judicial officer, former judicial officer, solicitor, former solicitor, or other officer of the court during or because of the exercise of his official duty.~~

~~(6)~~ ~~The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.~~

~~(7)~~ ~~The murder of a federal, state, or local law enforcement officer or former federal, state, or local law enforcement officer, peace officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties.~~

~~(8)~~ ~~The murder of a family member of an official listed in subitems (5) and (7) above with the intent to impede or retaliate against the official. ‘Family member’ means a spouse, parent, brother, sister, child, or person to whom the official stands in the place of a parent or a person living in the official's household and related to him by blood or marriage.~~

~~(9)~~ ~~Two or more persons were murdered by the defendant by one act or pursuant to one scheme or course of conduct.~~

~~(10)~~ ~~The murder of a child eleven years of age or under.~~

~~(11)~~ ~~The murder of a witness or potential witness committed at any time during the criminal process for the purpose of impeding or deterring prosecution of any crime.~~

~~(12)~~ ~~The murder was committed by a person deemed a sexually violent predator pursuant to the provisions of Chapter 48, Title 44, or a person deemed a sexually violent predator who is released pursuant to Section 44‑48‑120.~~

~~(b)~~ ~~Mitigating circumstances:~~

~~(1)~~ ~~The defendant has no significant history of prior criminal conviction involving the use of violence against another person.~~

~~(2)~~ ~~The murder was committed while the defendant was under the influence of mental or emotional disturbance.~~

~~(3)~~ ~~The victim was a participant in the defendant's conduct or consented to the act.~~

~~(4)~~ ~~The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.~~

~~(5)~~ ~~The defendant acted under duress or under the domination of another person.~~

~~(6)~~ ~~The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.~~

~~(7)~~ ~~The age or mentality of the defendant at the time of the crime.~~

~~(8)~~ ~~The defendant was provoked by the victim into committing the murder.~~

~~(9)~~ ~~The defendant was below the age of eighteen at the time of the crime.~~

~~(10)~~ ~~The defendant had mental retardation at the time of the crime. ‘Mental retardation’ means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.~~

~~The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.~~

~~Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in subsection (A). Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. Where a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. No person sentenced to life imprisonment or a mandatory minimum term of imprisonment for thirty years under this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A).~~

~~(D)~~ ~~Notwithstanding the provisions of Section 14‑7‑1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.~~

~~(E)~~ ~~In a criminal action in which a defendant is charged with a crime which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless such beliefs or attitudes would render him unable to return a verdict according to law.~~”

SECTION 2. Section 16-3-655 of the 1976 Code is amended to read:

“Section 16-3-655.(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

(1) the actor engages in sexual battery with a victim who is less than eleven years of age; or

(2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23‑3‑430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23‑3‑430(D).

(B) A person is guilty of criminal sexual conduct with a minor in the second degree if:

(1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or

(2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.

(C) A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child. However, a person may not be convicted of a violation of the provisions of this subsection if the person is eighteen years of age or less when the person engages in consensual lewd or lascivious conduct with another person who is at least fourteen years of age.

(D)(1) A person convicted of a violation of subsection (A)(1) is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum of twenty‑five years, no part of which may be suspended nor probation granted, or must be imprisoned for life. In the case of a person pleading guilty or nolo contendere to a violation of subsection (A)(1), the judge must make a specific finding on the record regarding whether the type of conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. In the case of a person convicted at trial for a violation of subsection (A)(1), the judge or jury, whichever is applicable, must designate as part of the verdict whether the conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. If the person has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out‑of‑state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age, he must be punished ~~by death or~~ by imprisonment for life, as provided in this section. For the purpose of determining a prior conviction under this subsection, the person must have been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent on a separate occasion, prior to the instant adjudication, for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out‑of‑state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age. ~~In order to be eligible for the death penalty pursuant to this section, the sexual battery constituting the current offense and any prior offense must have involved sexual or anal intercourse by a person or intrusion by an object. If any prior offense that would make a person eligible for the death penalty pursuant to this section occurred prior to the effective date of this act and no specific finding was made regarding the nature of the conduct or is an out‑of‑state or federal conviction, the determination of whether the sexual battery constituting the prior offense involved sexual or anal intercourse by a person or intrusion by an object must be made in the separate sentencing proceeding provided in this section and proven beyond a reasonable doubt and designated in writing by the judge or jury, whichever is applicable. If the judge or jury, whichever is applicable, does not find that the prior offense involved sexual or anal intercourse by a person or intrusion by an object, then the person must be sentenced to imprisonment for life.~~ For purposes of this subsection, imprisonment for life means imprisonment until death.

(2) A person convicted of a violation of subsection (A)(2) is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than thirty years, no part of which may be suspended nor probation granted.

(3) A person convicted of a violation of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years in the discretion of the court.

(4) A person convicted of a violation of subsection (C) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than fifteen years, or both.

(E) ~~If the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to items (1) and (2), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, ‘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.~~ No person sentenced to life imprisonment, pursuant to this subsection, 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. ~~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 imposed pursuant to this section to life imprisonment pursuant to the provisions of Section 14, Article IV of the Constitution of South Carolina, 1895, the commutee 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.~~

~~(1)~~ ~~When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty‑four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pled guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States, or the State of South Carolina, or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.~~

~~(2)~~ ~~In sentencing a person, upon conviction or adjudication of guilt of a defendant pursuant to this section, the judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:~~

~~(a)~~ ~~Statutory aggravating circumstances:~~

~~(i)~~ ~~The victim's resistance was overcome by force.~~

~~(ii)~~ ~~The victim was prevented from resisting the act because the actor was armed with a dangerous weapon.~~

~~(iii)~~ ~~The victim was prevented from resisting the act by threats of great and immediate bodily harm, accompanied by an apparent power to inflict bodily harm.~~

~~(iv)~~ ~~The victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing his resistance.~~

~~(v)~~ ~~The crime was committed by a person with a prior conviction for murder.~~

~~(vi)~~ ~~The offender committed the crime for himself or another for the purpose of receiving money or a thing of monetary value.~~

~~(vii)~~ ~~The offender caused or directed another to commit the crime or committed the crime as an agent or employee of another person.~~

~~(viii)~~ ~~The crime was committed against two or more persons by the defendant by one act, or pursuant to one scheme, or course of conduct.~~

~~(ix)~~ ~~The crime was committed during the commission of burglary in any degree, kidnapping, or trafficking in persons.~~

~~(b)~~ ~~Mitigating circumstances:~~

~~(i)~~ ~~The defendant has no significant history of prior criminal convictions involving the use of violence against another person.~~

~~(ii)~~ ~~The crime was committed while the defendant was under the influence of mental or emotional disturbance.~~

~~(iii)~~ ~~The defendant was an accomplice in the crime committed by another person and his participation was relatively minor.~~

~~(iv)~~ ~~The defendant acted under duress or under the domination of another person.~~

~~(v)~~ ~~The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.~~

~~(vi)~~ ~~The age or mentality of the defendant at the time of the crime.~~

~~(vii)~~ ~~The defendant was below the age of eighteen at the time of the crime.~~

~~The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances, which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases, the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.~~

~~When a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. When a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in this subsection. Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. When a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to life imprisonment. No person sentenced to life imprisonment pursuant to this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for the death penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant upon conviction or adjudication of guilt of a defendant pursuant to this section, the trial judge shall dismiss the jury and shall sentence the defendant to life imprisonment, as provided in this subsection.~~

~~(3)~~ ~~Notwithstanding the provisions of Section 14‑7‑1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.~~

~~(4)~~ ~~In a criminal action pursuant to this section, which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless those beliefs or attitudes would render him unable to return a verdict according to law.~~

~~(F)(1)~~ ~~In all cases in which an individual is sentenced to death pursuant to this section, the trial judge, before the dismissal of the jury, shall verbally instruct the jury concerning the discussion of its verdict. A standard written instruction must be promulgated by the Supreme Court for use in capital cases brought pursuant to this section.~~

~~(2)~~ ~~The verbal instruction must include:~~

~~(a)~~ ~~the right of the juror to refuse to discuss the verdict;~~

~~(b)~~ ~~the right of the juror to discuss the verdict to the extent that the juror so chooses;~~

~~(c)~~ ~~the right of the juror to terminate any discussion pertaining to the verdict at any time the juror so chooses;~~

~~(d)~~ ~~the right of the juror to report any person who continues to pursue a discussion of the verdict or who continues to harass the juror after the juror has refused to discuss the verdict or communicated a desire to terminate discussion of the verdict; and~~

~~(e)~~ ~~the name, address, and phone number of the person or persons to whom the juror should report any harassment concerning the refusal to discuss the verdict or the juror's decision to terminate discussion of the verdict.~~

~~(3)~~ ~~In addition to the verbal instruction of the trial judge, each juror, upon dismissal from jury service, shall receive a copy of the written jury instruction as provided in item (1).~~

~~(G)(1)~~ ~~Whenever the death penalty is imposed pursuant to this section, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court of South Carolina together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court of South Carolina.~~

~~(2)~~ ~~The Supreme Court of South Carolina shall consider the punishment as well as any errors by way of appeal.~~

~~(3)~~ ~~With regard to the sentence, the court shall determine whether the:~~

~~(a)~~ ~~sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;~~

~~(b)~~ ~~evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in subsection (E)(2)(a); and~~

~~(c)~~ ~~sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.~~

~~(4)~~ ~~Both the defendant and the State shall have the right to submit briefs within the time provided by the court and to present oral arguments to the court.~~

~~(5)~~ ~~The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, is authorized to:~~

~~(a)~~ ~~affirm the sentence of death; or~~

~~(b)~~ ~~set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court of South Carolina in its decision, and the extracts prepared as provided for, must be provided to the resentencing judge for his consideration. If the court finds error prejudicial to the defendant in the sentencing proceeding conducted by the trial judge before the trial jury as outlined in subsection (E)(1), the court may set the sentence aside and remand the case for a resentencing proceeding to be conducted by the same or a different trial judge and by a new jury impaneled for this purpose. In the resentencing proceeding, the new jury, if the defendant does not waive the right of a trial jury for the resentencing proceeding, shall hear evidence in extenuation, mitigation, or aggravation of the punishment in addition to any evidence admitted in the defendant's first trial relating to guilt for the particular crime for which the defendant has been found guilty.~~

~~(6)~~ ~~The sentence review is in addition to direct appeal, if taken, and the review and appeal must be consolidated for consideration. The court shall render its decision on all legal errors, the factual substantiation of the verdict, and the validity of the sentence.~~

~~(H)(1)~~ ~~Whenever the solicitor seeks the death penalty pursuant to this section, he shall notify the defense attorney of his intention to seek the death penalty at least thirty days prior to the trial of the case. At the request of the defense attorney, the defense attorney must be excused from all other trial duties ten days prior to the term of court in which the trial is to be held.~~

~~(2)(a)~~ ~~Whenever any person is charged with first degree criminal sexual conduct with a minor who is less than eleven years and the death penalty is sought, the court, upon determining that the person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend the person in the trial of the action. One of the attorneys so appointed shall have at least five years' experience as a licensed attorney and at least three years' experience in the actual trial of felony cases, and only one of the attorneys so appointed may be the public defender or a member of his staff. In all cases when no conflict exists, the public defender or member of his staff must be appointed if qualified. If a conflict exists, the court then shall turn first to the contract public defender attorneys, if qualified, before turning to the Office of Indigent Defense.~~

~~(b)~~ ~~Notwithstanding another provision of law, the court shall order payment of all fees and costs from funds available to the Office of Indigent Defense for the defense of the indigent. Any attorney appointed must be compensated at a rate not to exceed fifty dollars per hour for time expended out of court and seventy‑five dollars per hour for time expended in court. Compensation may not exceed twenty‑five thousand dollars and must be paid from funds available to the Office of Indigent Defense for the defense of indigent represented by court‑appointed, private counsel.~~

~~(3)(a)~~ ~~Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed twenty thousand dollars as the court deems appropriate. Payment of these fees and expenses may be ordered in cases where the defendant is an indigent represented by either court‑appointed, private counsel, or the public defender.~~

~~(b)~~ ~~Court‑appointed counsel seeking payment for fees and expenses shall request these payments from the Office of Indigent Defense within thirty days after the completion of the case. For the purposes of this statute, exhaustion of the funds shall occur if the funds administered by the Office of Indigent Defense and reserved for death penalty fees and expenses have been reduced to zero. If either the Death Penalty Trial Fund or the Conflict Fund has been exhausted in a month and the other fund contains money not scheduled to be disbursed in that month, then the Indigent Defense Commission must transfer a sufficient amount from the fund with the positive fund balance to the fund with no balance and pay the obligation to the extent possible.~~

~~(4)~~ ~~Payment in excess of the hourly rates and limit in item (2) or (3) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred. Upon a finding that timely procurement of services cannot await prior authorization, the court may authorize the provision of and payment for services nunc pro tunc.~~

~~(5)~~ ~~After completion of the trial, the court shall conduct a hearing to review and validate the fees, costs, and other expenditures on behalf of the defendant.~~

~~(6)~~ ~~The Supreme Court shall promulgate guidelines on the expertise and qualifications necessary for attorneys to be certified as competent to handle death penalty cases brought pursuant to this section.~~

~~(7)~~ ~~The Office of Indigent Defense shall maintain a list of death penalty qualified attorneys who have applied for and received certification by the Supreme Court as provided for in this subsection. In the event the court‑appointed counsel notifies the chief administrative judge in writing that he or she does not wish to provide representation in a death penalty case, the chief administrative judge shall advise the Office of Indigent Defense which shall forward a name or names to the chief administrative judge for consideration. The appointment power is vested in the chief administrative judge. The Office of Indigent Defense shall establish guidelines as are necessary to ensure that attorneys' names are presented to the judges on a fair and equitable basis, taking into account geography and previous assignments from the list. Efforts must be made to present an attorney from the area or region where the action is initiated.~~

~~(8)~~ ~~The payment schedule provided in this subsection, as amended by Act 164 of 1993, shall apply to any case for which trial occurs on or after July 1, 1993.~~

~~(9)~~ ~~Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense. This item shall not pertain to any case in which counsel has been appointed on the effective date of this act.~~

~~(10)~~ ~~The judicial department biennially shall develop and make available to the public a list of standard fees and expenses associated with the defense of an indigent person in a death penalty case.~~

~~(I)~~ ~~Notwithstanding another provision of law, in any trial pursuant to this section when the maximum penalty is death or in a separate sentencing proceeding following the trial, the defendant and his counsel shall have the right to make the last argument.~~”

SECTION 3. Section 10-11-325(B) of the 1976 Code is amended to read:

“(B) It is unlawful for a person intentionally to detonate an explosive or destructive device or ignite any incendiary device upon the capitol grounds or within the capitol building. A person who violates this subsection is guilty of a felony and, upon conviction:

(1) in cases resulting in the death of another person where there was malice aforethought, must be punished ~~by death,~~ by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years;

(2) in cases resulting in the death of another person where there was not malice aforethought, must be imprisoned not less than two years nor more than thirty years;

(3) in cases resulting in injury to a person, must be imprisoned for not less than ten years nor more than twenty‑five years;

(4) in cases resulting in damage to a building or other real or personal property, must be imprisoned for not less than two years nor more than twenty‑five years.”

SECTION 4. Section 16-23-490(A) of the 1976 Code is amended to read:

“(A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime. This five-year sentence does not apply in cases where ~~the death penalty or~~ a life sentence without parole is imposed for the violent crime.”

SECTION 5. Section 16-23-715 of the 1976 Code is amended to read:

“Section 16-23-715. A person who, without lawful authority, possesses, uses, threatens, or attempts or conspires to possess or use a weapon of mass destruction in furtherance of an act of terrorism is guilty of a felony and upon conviction:

(1) in cases resulting in the death of another person, must be punished by ~~death or by~~ imprisonment for life; or

(2) in cases which do not result in the death of another person, must be punished by imprisonment for not less than twenty five years nor more than life.”

SECTION 6. Section 16-23-720(A) of the 1976 Code is amended to read:

“(A) It is unlawful for a person intentionally to use a destructive device or cause an explosion, or intentionally to aid, counsel, solicit another, or procure the use of a destructive device. A person who violates this subsection is guilty of a felony and, upon conviction:

(1) in cases resulting in the death of another person where there was malice aforethought, must be punished ~~by death,~~ by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years;

(2) in cases resulting in the death of another person where there was not malice aforethought, must be imprisoned not less than ten years nor more than thirty years; and

(3) in cases resulting in injury to a person, must be imprisoned for not less than ten years nor more than twenty‑five years.”

SECTION 7. Section 1-7-100 of the 1976 Code is amended to read:

“Section 1-7-100. The Attorney General shall consult with and advise the solicitors in matters relating to the duties of their offices. When, in his judgment, the interest of the State requires it he shall~~:~~

~~(1) Assist the solicitors by attending the grand jury in the examination of any case in which the party accused is charged with a capital offense; and~~

~~(2)~~ ~~Be~~ be present at the trial of any cause in which the State is a party or interested and, when so present, shall have the direction and management of such prosecution or suit.”

SECTION 8. Section 17-3-330 of the 1976 Code is amended to read:

“Section 17-3-330. ~~(A)~~ The Office of Indigent Defense shall:

(1) serve as the entity which distributes all funds appropriated by the General Assembly for the defense of indigents, including funds allocated to public defender offices pursuant to the formula, ~~funds for the defense of capital cases,~~ funds for attorney's fees and expenses in ~~non‑capital~~ other cases, and other funds appropriated for these purposes;

(2) perform those functions provided pursuant to Section 17‑3‑360;

(3) serve as a resource for the compilation of accurate statistical data covering the indigent defense system in this State;

(4) implement other duties the commission may direct; and

(5) report annually to the General Assembly on the indigent defense system.

~~(B)~~ ~~On or about June thirtieth of each year, if the Office of Indigent Defense determines, after taking into consideration all outstanding obligations against the fund for payment of attorney fees and expenses in non‑capital cases, that unexpended funds remain, these funds shall be rolled over into the fund for payment of attorney's fees and expenses in capital cases; provided, however, this shall occur only in the event the funds in the capital fund have been exhausted at that time. This fund shall at no time exceed three million dollars.~~

~~(C)~~ ~~Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense.~~”

SECTION 9. Section 17-3-520 of the 1976 Code is amended to read:

“Section 17-3-520. (A) In order for a person to be eligible to fill the position of circuit public defender, the person must:

(1) be at least twenty five years of age;

(2) have been admitted and licensed to practice law in all courts of the State for at least five years; and

(3) be a member in good standing of the South Carolina Bar, at all times; ~~and~~

~~(4)~~ ~~be competent to counsel and defend a person charged with a capital felony and be certified at all times to defend capital cases in the State~~.

(B) A circuit public defender is responsible for:

(1) administering and coordinating the day to day operations of their respective offices, supervising the public defenders and other staff serving in the offices, and actively participating in the representation of clients throughout the judicial circuit;

(2) keeping and maintaining appropriate records, which includes:

(i) the number of persons represented pursuant to the provisions of this chapter, including cases assigned to other attorneys because of conflicts of interest;

(ii) the offenses charged; the outcome of each case; the expenditures made in carrying out the duties imposed by this article; and

(iii) other information and data as the commission may from time to time require;

(3) establishing a juvenile offender division within the circuit public defender office to specialize in the criminal defense of juveniles;

(4) preparing and submitting annually to the executive director of the commission a proposed budget for the provision of circuit wide indigent defense services, an annual report containing pertinent data on the operation, costs, and needs of the circuit defender office, and other information as the commission or executive director may require;

(5) assisting the commission in establishing the state system and establishing the standards, policies, and procedures required pursuant to the applicable provisions of Section 17 3 310;

(6) developing and presenting for the commission's approval a circuit plan for the delivery of criminal indigent defense services;

(7) establishing processes and procedures consistent with commission standards to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically;

(8) negotiating and entering into contracts, as appropriate and when authorized by the commission, with independent counsel actively practicing within the circuit for the provision of indigent defense services in cases in which a conflict of interest exists in the circuit public defender office and in other criminal cases in the circuit in which indigent defense representation by independent counsel is necessary or advisable;

(9) establishing processes and procedures consistent with commission standards to ensure that office and contract personnel use information technology and caseload management systems so that detailed expenditure and caseload data is accurately collected, recorded, and reported;

(10) establishing administrative management procedures for circuit and county offices;

(11) establishing procedures in conformity with commission standards for managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads and taking into account case complexity, the severity of the charges, potential punishments, and the legal skills required to provide effective assistance of counsel;

(12) ~~establishing policies and procedures consistent with commission standards and Supreme Court Rules for assigning counsel for indigent persons in capital cases;~~

~~(13)~~ establishing and supervising consistent commission standards, a training and performance evaluation program for attorneys and non attorney staff members and contractors;

~~(14)~~(13) establishing procedures consistent with commission standards to handle complaints involving indigent defense performance and to ensure that public defenders, office personnel, contract and appointed attorneys and clients are aware of avenues available for bringing a complaint and that office procedures do not conflict with the rules and disciplinary jurisdiction of the South Carolina Supreme Court; and

~~(15)~~(14) performance of other duties assigned by the commission.”

SECTION 10. Section 17-17-10 of the 1976 Code is amended to read:

“Section 17-17-10. If any person shall be or stand committed or detained for any crime, unless (a) for ~~felony the punishment of which is death or~~ treason, plainly expressed in the warrant of commitment, (b) charged as accessory before the fact to treason ~~or felony the punishment of which is death~~ or (c) charged with suspicion of treason ~~or felony which is punishable with death~~, which shall be plainly expressed in the warrant of commitment, he shall be entitled to the writ of habeas corpus.”

SECTION 11. Section 17-25-45(A) and (B) of the 1976 Code is amended to read:

“Section 17-25-45. (A) Notwithstanding any other provision of law, ~~except in cases in which the death penalty is imposed,~~ upon a conviction for a most serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has either:

(1) one or more prior convictions for:

(a) a most serious offense; or

(b) a federal or out‑of‑state conviction for an offense that would be classified as a most serious offense under this section; or

(2) two or more prior convictions for:

(a) a serious offense; or

(b) a federal or out‑of‑state conviction for an offense that would be classified as a serious offense under this section.

(B) Notwithstanding any other provision of law, ~~except in cases in which the death penalty is imposed,~~ upon a conviction for a serious offense as defined by this section, a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for:

(1) a serious offense;

(2) a most serious offense;

(3) a federal or out‑of‑state offense that would be classified as a serious offense or most serious offense under this section; or

(4) any combination of the offenses listed in items (1), (2), and (3) above.”

SECTION 12. Section 17-27-130 of the 1976 Code is amended to read:

“Section 17-27-130. Where a defendant alleges ineffective assistance of prior trial counsel or appellate counsel as a ground for post‑conviction relief or collateral relief under any procedure, the applicant shall be deemed to have waived the attorney‑client privilege with respect to both oral and written communications between counsel and the defendant, and between retained or appointed experts and the defendant, to the extent necessary for prior counsel to respond to the allegation. This waiver of the attorney‑client privilege shall be deemed automatic upon the filing of the allegation alleging ineffective assistance of prior counsel and the court need not enter an order waiving the privilege. Thereafter, counsel alleged to have been ineffective is free to discuss and disclose any aspect of the representation with representatives of the State for purposes of defending against the allegations of ineffectiveness, to the extent necessary for prior counsel to respond to the allegation.

~~In the case of a defendant who has been convicted of a capital offense and sentenced to death, the defendant's prior trial counsel or appellate counsel shall make available to the capital defendant's collateral counsel the complete files of the defendant's trial or appellate counsel. The capital defendant's collateral counsel may inspect and photocopy the files, but the defendant's prior trial or appellate counsel shall maintain custody of their respective files, except as to the material which is admitted into evidence in any trial proceeding.~~”

SECTION 13. Section 17-27-150 of the 1976 Code is amended to read:

“Section 17-27-150. ~~(A)~~ A party in a ~~noncapital~~ post‑conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17‑27‑60 or similar applicable provisions of law.

~~(B)~~ ~~A party in a capital post‑conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure.~~”

SECTION 14. Section 18-1-90 of the 1976 Code is amended to read:

“Section 18-1-90. Bail may be allowed to the defendant in all cases in which the appeal is from the trial, conviction, or sentence for a criminal offense. However, bail is not allowed when the defendant has been sentenced to ~~death,~~ life imprisonment~~,~~ or imprisonment for more than ten years.”

SECTION 15. Section 22-5-310 of the 1976 Code is amended to read:

“Section 22-5-310. In criminal matters beyond their jurisdiction to try, magistrates shall sit as examining courts and commit, discharge and~~, except in capital cases,~~ recognize persons charged with such offenses.”

SECTION 16. Section 24-3-40(B)(2) of the 1976 Code is amended to read:

“(2) A prisoner serving life in prison ~~or sentenced to death~~ shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.”

SECTION 17. Section 24-13-125(A) of the 1976 Code is amended to read:

“(A) Notwithstanding any other provision of law, except in a case in which ~~the death penalty or~~ a term of life imprisonment is imposed, or as provided in this subsection, an inmate convicted of a ‘no parole offense’, as defined in Section 24-13-100, and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for work release until the inmate has served not less than eighty percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. A person is eligible for work release if the person is sentenced for voluntary manslaughter (Section 16-3-50), kidnapping (Section 16-3-910), carjacking (Section 16-3-1075), burglary in the second degree (Section 16-11-312(B)), armed robbery (Section 16-11-330(A)), or attempted armed robbery (Section 16-11-330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16-1-60, and the person is within three years of release from imprisonment. Except as provided in this subsection, nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release by another provision of law to be eligible for work release.”

SECTION 18. Section 24-13-150(A) of the 1976 Code is amended to read:

“(A) Notwithstanding any other provision of law, except in a case in which ~~the death penalty or~~ a term of life imprisonment is imposed, an inmate convicted of a ‘no parole offense’ as defined in Section 24-13-100 and sentenced to the custody of the Department of Corrections, including an inmate serving time in a local facility pursuant to a designated facility agreement authorized by Section 24-3-20 or Section 24-3-30, is not eligible for early release, discharge, or community supervision as provided in Section 24-21-560, until the inmate has served at least eighty-five percent of the actual term of imprisonment imposed. This percentage must be calculated without the application of earned work credits, education credits, or good conduct credits, and is to be applied to the actual term of imprisonment imposed, not including any portion of the sentence which has been suspended. Nothing in this section may be construed to allow an inmate convicted of murder or an inmate prohibited from participating in work release, early release, discharge, or community supervision by another provision of law to be eligible for work release, early release, discharge, or community supervision.”

SECTION 19. Section 24-21-560(A) of the 1976 Code is amended to read:

“(A) Notwithstanding any other provision of law, except in a case in which ~~the death penalty or~~ a term of life imprisonment is imposed, any sentence for a ‘no parole offense’ as defined in Section 24‑13‑100 must include any term of incarceration and completion of a community supervision program operated by the Department of Probation, Parole, and Pardon Services. No prisoner who is serving a sentence for a ‘no parole offense’ is eligible to participate in a community supervision program until he has served the minimum period of incarceration as set forth in Section 24‑13‑150. Nothing in this section may be construed to allow a prisoner convicted of murder or a prisoner prohibited from early release, discharge, or work release by any other provision of law to be eligible for early release, discharge, or work release.”

SECTION 20. Section 25-7-40 of the 1976 Code is amended to read:

“Section 25-7-40. Whoever in time of war, with intent that the same shall be communicated to the enemy, shall collect, record, publish or communicate or attempt to elicit any information with respect to (a) the movement, numbers, description, condition or disposition of any of the armed forces, ships, aircraft or war materials of the United States or this State, (b) the plans or conduct or supposed plans or conduct of any naval or military operations or (c) any works or measures undertaken for, connected with or intended for the fortification or defense of any place or any other information relating to the public defense which might be useful to the enemy shall be punished by ~~death or by~~ imprisonment for not more than thirty years.”

SECTION 21. Section 1-7-340, 16-3-21, 16-3-25, 16-3-26, 16-3-28, 17-19-80, 17-25-370, 17-25-380, 17-25-390, 17-25-400, 17-27-160, 18-9-20, and 24-21-615 are repealed.

SECTION 22. Article 5, Chapter 3, Title 24 of the 1976 Code, which includes sections 24-3-510, 24-3-520, 24-3-530, 24-3-540, 24-3-550, 24-3-560, 24-3-570, 24-3-580, and 24-3-590, is repealed.

SECTION 23. 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 24. This act takes effect upon approval by the Governor.

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