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**SOUTH CAROLINA SENTENCING REFORM COMMISSION**

**WORK GROUP 1**

**(This is a draft document put together by Work Group 1 staff. Work Group 1 members are currently reviewing the draft document to determine its accuracy, make corrections, make additions, make deletions, or make any other changes. The document will be updated as changes are made. Please check the latest date on the document to make sure that you have the most recent update.)**

**PROPOSED RECOMMENDATIONS APPROVED BY WORK GROUP 1**

**GENERAL CRIMINAL OFFENSE PROVISIONS**

**“Most Serious Offenses” / “Serious Offenses”**

1. Provide that upon conviction for a “Most Serious Offense”, as defined by Section 17-25-45, a person must be sentenced to a term of imprisonment for life without the possibility of parole, if the person has one or more prior convictions for a “Most Serious Offense” or two or more prior convictions for a “Serious Offense”, as defined by Section 17-25-45.

2. Provide that the decision to invoke sentencing under the “Most Serious Offense” and “Serious Offense” provisions of Section 17-25-45 is in the discretion of the solicitor prosecuting the case.

**“Violent Crimes”**

3. Amend the list of “Violent Crimes” provided in Section 16-1-60 as follows:

 “Kidnapping” (§ 16‑3‑910) (However, if the offender is within 3 years of release from imprisonment,

 and the kidnapping did not involve any criminal sexual conduct or any other “Violent Crime”, then

 the person is treated as if he or she did not commit a “Violent Crime”);

 “Voluntary Manslaughter” (§ 16‑3‑50) (However, if the offender is within 3 years of release from imprisonment, then the person is treated as if he or she did not commit a “Violent Crime”);

 “Armed Robbery” (§ 16‑11‑330(A)) (However, if the offender is within 3 years of release from imprisonment, then the person is treated as if he or she did not commit a “Violent Crime”);

 “Attempted Armed Robbery” (§ 16‑11‑330(B)) (However, if the offender is within 3 years of release from imprisonment, then the person is treated as if he or she did not commit a “Violent Crime”); and

 “Carjacking” (§ 16‑3‑1075) (However, if the offender is within 3 years of release from imprisonment, then the person is treated as if he or she did not commit a “Violent Crime”) .

4. Add the following offenses to the list of “Violent Crimes” provided in Section 16-1-60:

 “Detonating a Destructive Device upon the Capitol Grounds” resulting in death with malice (§ 10-33-

 325(B)(1));

 “Killing by Poison” (§ 16-3-30);

 “Killing by Stabbing or Thrusting” (§ 16-3-40);

 “Lynching in the 1st Degree” (§ 16-3-210);

 “Killing in a Duel” (§ 16-3-430);

 “Spousal Sexual Battery” (§ 16-3-615);

 “Producing, Directing, or Promoting Sexual Performance by a Child” (§ 16-3-820);

 “Lewd Act upon a Child under 16” (§ 16-15-140);

 “Sexual Exploitation of a Minor 1st Degree” (§ 16-15-395);

 “Sexual Exploitation of a Minor 2nd Degree” (§ 16-15-405);

 “Promoting Prostitution of a Minor” (§ 16-15-415);

 “Participating in Prostitution of a Minor” (§ 16-15-425);

 “Aggravated Voyeurism” (§ 16-17-470(C));

 “Detonating a Destructive Device” resulting in death with malice (§ 16-23-720(A)(1));

 “Detonating a Destructive Device” resulting in death without malice (§ 16-23-720(A)(2));

 “Boating under the Influence” resulting in death (§ 50-21-113(A)(2));

 “Vessel Operator’s Failure to Render Assistance” resulting in death (§ 50-21-130(A)(3));

 “Removing or Damaging an Airport Facility or Equipment” resulting in death (§ 55-1-30(3));

 “Failure to Stop when Signaled by a Law Enforcement Vehicle” resulting in death (§ 56-5-750(C)(2));

 “Interference with Traffic-Control Devices, Railroad Signs, or Signals” resulting in death (§ 56-5-

 1030(A)(2));

 “Hit and Run” resulting in death (§ 56-5-1210(A)(3));

 “Felony DUI or DWUAC” resulting in death (§ 56-5-2945(A)(2));

 “Putting Destructive or Injurious Materials on a Highway” resulting in death (§ 57-7-20(D)); and

 “Obstruction of a Railroad” resulting in death (§ 58-17-4090).

5. Prohibit a person convicted of a “Violent Crime”, as defined by Section 16-1-60, from selling, purchasing, or possessing a firearm or ammunition.

**SPECIFIC CRIMINAL OFFENSE PROVISIONS**

**“Arson”**

6. Restructure the degrees of “Arson” pursuant to Section 16-11-110 as follows:

 A person who commits “Arson” resulting in the death of a person is guilty of “Arson in the 1st Degree” and must be imprisoned 30 years.

 A person who commits “Arson” resulting in serious bodily injury to a person is guilty of “Arson in the 2nd Degree” and must be imprisoned not less than 3 years nor more than 25 years.

 A person who commits “Arson” resulting in bodily injury or simply damage to the property is guilty of “Arson in the 3nd Degree” and must be imprisoned not more than 15 years.

**“Assault and Battery”**

7. Abolish the common law offense of “Assault and Battery of a High and Aggravated Nature” and repeal the statutory offense of “Assault and Battery with Intent to Kill” (Section 16-3-620), and establish graduated offenses of “Assault and Battery”, to include “Attempted Murder”, “Aggravated Assault and Battery”, and “Assault and Battery”.

8. Consolidate specialized “Assault and Battery” offenses such as “Assault and Battery against School Personnel”, “Assault and Battery upon a Correctional Facility Employee”, “Assault and Battery upon an Emergency Medical Service Provider, Firefighter, or Home Healthcare Worker”, “Aggravated Assault and Battery upon an Emergency Medical Service Provider, Firefighter, or Home Healthcare Worker”, and Assault and Battery against Sports Officials and Coaches” into the graduated offenses of “Assault and Battery”.

**“Burglary 2nd Degree (Non-aggravating Circumstances)”**

9. Reduce the penalty for the offense of “Burglary 2nd Degree (Non-aggravating circumstances)” pursuant to Section 16-11-312(A), from imprisonment for not more than 15 years, to imprisonment for not more than 10 years.

**Controlled Substance Offenses**

Non-Trafficking Controlled Substance Offenses

10. Allow for probation, suspension of sentences, and parole for all non-trafficking controlled substance offenses, including “Possession”, “Possession with the Intent to Manufacture” (PWIM), “Manufacturing”, “Possession with the Intent to Distribute” (PWID), “Distribution”, “Possession with the Intent to Purchase” (PWIP), “Purchasing”, and proximity offenses.

Proximity Offenses

11. Allow a person charged with committing a controlled substance offense within the proximity of a school, playground, or park pursuant to Section 44-53-445 to provide an affirmative defense if the person did not actually commit the controlled substance offense within the proximity of a school, playground, or park; but instead, the person was merely stopped by law enforcement for the offense within the proximity of the school, playground, or park.

“Trafficking”

12. Measure marijuana by plants instead of weight for purposes of determining the offense of “Trafficking” marijuana pursuant to Section 44-53-370(e)(1).

Cocaine, Crack, and Meth Equalization

13. Equalize all penalties related to controlled substance offenses involving crack, cocaine, or meth that were not equalized previously.

Ephedrine, Pseudoephedrine, or Phenylpropaneolamine

14. Eliminate the mandatory minimum of 3 years for 1st offense “Possession” of 12 to < 28 grams of ephedrine, pseudoephedrine, or phenylpropaneolamine pursuant to Section 44-53-375(E)(1).

15. Reduce the amount of ephedrine, pseudoephedrine, or phenylpropaneolamine from 12 to < 28 grams, to 9 to < 28 grams, for 1st offense “Possession” pursuant to Section 44-53-375(E)(1).

Assessment

16. Require a controlled substance offender to pay a special controlled substance offense assessment in addition to all other fines, fees, and assessments, and allocate the proceeds of the fee to support alternative sentencing programs for controlled substance offenders.

Conditional Discharge

17. Allow for conditional discharge of all 1st offense controlled substance possession charges, including all Schedule II-V pharmaceuticals, pursuant to Section 44-53-450. Require that the person charged with the controlled substance offense pay a conditional discharge fee, and allocate the proceeds of the fee to support alternative sentencing programs for controlled substance offenders.

Driver’s License Suspensions

18. Eliminate the requirement that a person’s driver’s license be suspended for committing a controlled substance offense pursuant to Section 56-1-745, unless the person is a minor.

Law Enforcement Reimbursements

19. Allow judges the discretion to require a controlled substance offender to reimburse applicable law enforcement agencies for money used by such law enforcement agencies to purchase controlled substances from the offender.

Possession of a Firearm

20. Allow judges the discretion to sentence a controlled substance offender to an additional 5 years of imprisonment if the offender possessed a firearm during the commission of the controlled substance offense unless the person committed a possession offense. Require that the firearm be reasonably accessible to the offender in order for the enhanced penalties to apply.

Prior and Subsequent Offenses

21. Provide that a “Possession” of marijuana offense does not count as a prior controlled substance offense for purposes of enhancing the penalty on a subsequent controlled substance offense unless the subsequent offense involves marijuana.

22. Provide that a 1st offense “Possession” of marijuana offense does not count as a prior substance offense for purposes of enhancing the penalty on a subsequent controlled substance offense unless the prior offense occurred within 5 years from the date of the conviction or the release of the person from confinement, whichever is the later date. For all other 1st offense controlled substance offenses, the prior offense must have occurred within 10 years from the date of the conviction or the release of the person from confinement, whichever is the later date.

Schedules

23. Provide that South Carolina’s controlled substance schedules automatically update when the federal government updates the federal schedule of controlled substances.

**“Disturbing Schools”**

24. Require a more serious act as an element in order for a person to be charged with “Disturbing Schools” pursuant to Section 16-17-420.

25. Give magistrates courts jurisdiction over the offense of “Disturbing Schools” pursuant to Section 16-17-420.

**“Driving under Suspension”**

26. If a judge is going to sentence a person to prison for a 1st offense “Driving under Suspension” violation pursuant to Section 56-1-460, the judge must require that the person serve the sentence in home detention as an alternative to the imprisonment. The offender must pay the costs of the home detention.

27. Establish the offense of “Felony Driving under Suspension”, so as to provide enhanced penalties if a person causes serious bodily injury or death while driving under suspension.

28. Offer a “Driver’s License Suspension Amnesty Day” in which a person who has had his or her driver’s license suspended can have the license reinstated without having to pay a drivers’ license suspension fee. The “Amnesty Day” would not include a person who has had his or her license suspended for certain serious offenses such as “Failure to Pay Child Support”, DUI or DWUAC, “Reckless Driving”, and habitual offenders.

**“Driving without a License”**

29. Give magistrates courts jurisdiction over the offense of “Driving without a License” pursuant to Section 56-1-440.

**“Failure to Return Property”**

30. Establish one comprehensive “Failure to Return Property” statute to include “Failure to Return Property to Libraries and Other Institutions” pursuant to Section 16-13-340, “Failure to Return Rented or Leased Property” pursuant to Section 16-13-420, and “Failure to Return a Video or Cassette Tape” pursuant to Section 16-13-425.

**“Harboring a Fugitive”**

31. Increase the penalties for the offense of harboring or providing assistance in any way to a fugitive or someone that provides false information to law enforcement that delays or prevents the service of an arrest warrant, bench warrant, or indictment pursuant to Section 16-5-50, from a fine of not less than $50 nor more than $1,000 or imprisonment for not less than 3 months nor more than 1 year, or both, to a fine of not more than $3,000 or imprisonment for not more than 3 years, or both.

**“Lynching”**

32. Change the name of “Lynching” to a more appropriate title such as “Assault and Battery by Mob”.

33. Restructure the degrees of “Lynching” pursuant to Section 16-3-210 and Section 16-3-220 as follows:

 A person who commits “Lynching” resulting in the death of a person is guilty of “Lynching in the 1st Degree” and must be imprisoned 30 years.

 A person who commits “Lynching” resulting in serious bodily injury to a person is guilty of “Lynching in the 2nd Degree” and must be imprisoned not less than 3 years nor more than 25 years.

 A person who commits “Lynching” resulting in bodily injury is guilty of “Lynching in the 3nd Degree” and must be imprisoned not more than 15 years.

**“Murder”**

34. Repeal statutes related to “Murder”, such as “Killing by Poison” pursuant to Section 16-3-30, “Killing by Stabbing or Thrusting” pursuant to Section 16-3-40, and “Killing in a Duel” pursuant to Section 16-3-430, which are rarely or never enforced.

**“Unlawful Carrying of a Handgun”**

35. Reduce the penalty for the offense of “Unlawful Carrying of a Handgun” pursuant to Sections 16-23-20 and 16-23-50, from fined not more than $1,000 or imprisoned not more than 1 year, or both, to fined not more than $500 or imprisoned not more than 30 days, or both.

**OTHER SENTENCING ISSUES**

**Bail**

36. Provide improved training for judges regarding bail-setting decisions, so that judges can make more informed decisions as to those persons who present high risks of absconding or further committing crime.

**Downward Departure**

37. Allow for a reduction in sentencing or “downward departure” for an offender who, after sentencing, provides substantial assistance to a law enforcement agency, solicitors’ office, or the Department of Corrections. “Downward departure” procedures would be modeled after proposed Rule 152(e) of the South Carolina Rules of Criminal Procedure. Upon the State’s motion made within 1 year of sentencing, the court may reduce a sentence if the person, after sentencing, provided substantial assistance in investigating or prosecuting another person, or provided aid to a Department of Corrections’ employee, volunteer, or other person who was in danger of being seriously injured or killed. Upon the State’s motion made more than 1 year after sentencing, the court may reduce a sentence if the person’s substantial assistance involved: (A) information not known to the person until 1 year or more after sentencing; (B) information provided by the person to the State within 1 year of sentencing but which did not become useful to the State until more than 1 year after sentencing; (C) information, the usefulness of which could not reasonably have been anticipated by the person until more than 1 year after sentencing and which was promptly provided to the State after its usefulness was reasonably apparent to the person; or (D) aid to a Department of Corrections’ employee, volunteer, or any other person who was in danger of being seriously injured or killed. A motion made pursuant to this provision shall be filed in the county where the person’s case arose by that circuit’s solicitor. The State shall send a copy to the chief judge within 5 days of filing. The chief judge or a circuit court judge currently assigned to that county shall have jurisdiction to hear and resolve the motion. Jurisdiction to resolve the motion is not limited to the original sentencing judge.

**Sentencing Resources**

38. Provide judges with the information necessary to explain sentencing in a manner that the offender, victim, lawyers, and public can understand, including, but not limited to, a description of the minimum and maximum imprisonment the offender must serve and how suspension, probation, parole, good time credits, etc., will impact the offender’s sentence.

39. Provide judges with a sentencing reference manual that would include, but is not limited to, general statistical information regarding sentencing and alternative sentencing options. Judges could voluntarily review such information to be better informed as to sentencing practices for various criminal offenses and to learn about alternative sentencing options available for such crimes.

**Victim Restitution Limits**

40. Increase victim restitution limits to the civil jurisdiction limits of each applicable court, possibly including an inflation factor or a legislative review of the restitution limits every 10 years.

**“Youthful Offender Act”**

41. Provide that a person under the age of 21 who is charged with “Armed Robbery” pursuant to Section 16-11-330(A), “Attempted Armed Robbery” pursuant to Section 16-11-330(B), or “Burglary 2nd” pursuant to 16-11-312, may receive a youthful offender sentence pursuant to the “Youthful Offender Act”; however, the person must serve a 3-year minimum sentence.

42. Clarify that judges cannot sentence a person to a youthful offender sentence unless the person qualifies as a “youthful offender” as defined by the “Youthful Offender Act”.

43. Add victim notification provisions to the “Youthful Offender Act”.

**Work Release Programs**

44. Allow certain non-violent offenders who are currently prohibited from participating in work release programs to participate.

**PROPOSED RECOMMENDATIONS CARRIED FORWARD BY WORK GROUP 1 FOR FURTHER DISCUSSION BY THE SENTENCING REFORM COMMISSION**

(These proposed recommendations were neither approved nor disapproved by Work Group 1)

**SPECIFIC CRIMINAL OFFENSE PROVISIONS**

**Controlled Substances**

1. Provide that a person who has committed a controlled substance offense which is not punishable by a mandatory minimum of 25 years or more is eligible to participate in home detention programs. (See H. 3976).

**Property Crimes**

2. Update the value limits of property for purposes of sentencing for property crimes to reflect current values, possibly including an inflation factor, or a legislative review of the limits every 10 years.

3. Update the penalties for committing property crimes.

**OTHER SENTENCING ISSUES**

**Bail**

4. Provide that a person who, while released on bail pending trial, is accused in this State of a violent offense shall have bail revoked and denied pending trial if a judge during a hearing in this State determines by a preponderance of the evidence that the person violated a condition of release relating to the safety of the community or the safety of any other person. (See S. 5). Consider adding being accused in this State of a controlled substance offense.

5. Provide that a court, in determining conditions of release on bail, shall consider any charges pending against the accused, and whether the accused is lawfully present in the United States and poses a substantial flight risk. If a person has been previously released on bail pending trial and during his release is charged with a violent offense, and the court finds by a preponderance of the evidence, that no condition or combination of conditions will reasonably assure the appearance of the person as required or the safety of any other person and the community, then the court shall deny release of the person pending trial. (See S. 6). Consider adding being charged with a controlled substance offense.

**Fiscal Impact Statements**

6. Require that a Fiscal Impact Statement (FIS) be requested automatically upon introduction of a criminal law bill that establishes a new criminal offense or amends the sentencing provisions of an existing criminal offense.

7. Require a minimum amount of time, such as 12 legislative days or 30 calendar days, for preparation of a Fiscal Impact Statement (FIS) for a criminal law bill that establishes a new criminal offense or amends the sentencing provisions of an existing criminal offense.

8. Strengthen the Office of State Budget’s authority to require the submission of information from State agencies for purposes of preparing a Fiscal Impact Statement (FIS).

9. Require the Office of State Budget to add organizations or associations, such as the South Carolina Sheriffs’ Association, to the Office of State Budget’s Fiscal Impact Statement (FIS) information network .

10. Require that a criminal law bill that establishes a new criminal offense or amends the sentencing provisions of an existing criminal offense that is reported out of the House or Senate Judiciary Committee be submitted to the House or Senate Finance/Ways and Means Committee, as applicable, for review before being placed on the House or Senate calendar for 2nd reading.

**Prisoner Housing**

11. Provide that a person who commits a non-violent, low level, misdemeanor offense and is sentenced to less than 180 days, or 365 days, must remain in local detention facilities for the remainder of the person’s sentence.

**PROPOSED RECOMMENDATIONS NOT APPROVED BY WORK GROUP 1**

**SPECIFIC CRIMINAL OFFENSE PROVISIONS**

**“Cockfighting”**

1. Provide that a person who engages in, is present at, or possesses birds for the purpose of “Cockfighting” is guilty of a felony and must be fined $500-$1,000 or imprisoned 6 months-5 years for a 1st offense; or felony and fined $1,000-$3,000 or imprisoned 1-5 years for a 2nd or subsequent offense. Also, remove the exception for “game fowl testing.” Finally, allow for forfeiture of monies, negotiable instruments, and securities specifically gained or used to engage in or further “Cockfighting” for 1st and subsequent offenses. (See. H. 3227).

**Controlled Substance Offenses**

“Possession”

2. Require probation or other non-prison sanctions for 1st time, and possibly 2nd time, controlled substance “Possession” violations, particularly if the risk level is low.

“PWID”

3. Require actual intent to distribute as an element of “Possession with the Intent to Distribute” (PWID).

4. Restructure the offense of “Possession with the Intent to Distribute” (PWID) to read like “Trafficking” (i.e. call it “Possession of a Distributable Amount” (PDA)) regardless if the person claimed the controlled substance was for personal use. Have a threshold of more than 1 gram but less than 10 grams of cocaine, crack, and meth, and 2 grains of heroin. The marijuana threshold could be more than 1 ounce but less than 10 pounds. The statute should read to allow for the prosecution to make the argument for PWID even though the weight is not present. The argument can be made using other evidence found at the scene of the crime (i.e. baggies, scales, money, etc.). Additional consideration needs to be given to the threshold amounts.

“Trafficking”

5. Restructure the “Trafficking” statutes as follows:

“Trafficking” Marijuana

1st Offense

10-50 lbs = 1-10 years

50-100 lbs = 5-15 years

> 100 lbs = 25 years

2nd Offense

10-50 lbs = 5-15 years

50-100 lbs = 15-25 years

> 100 lbs = 25 years

3rd or Subsequent Offense

10-50 lbs = 15-25 years

50-100 lbs = 25 years

> 100 lbs = 25 years

“Manufacturing” Marijuana

*\* Regardless of Weight*

1st Offense

1-50 plants = 0-5 years

51-100 plants = 1-10 years

2nd Offense

1-50 plants = 1-10 years

51-100 plants = 5-15 years

3rd or Subsequent Offense

1-50 plants = 5-15 years

51-100 plants = 25 years

“Trafficking Marijuana by Manufacturing” (*Regardless of weight*)

1st Offense

101-1,000 plants = 5-15 years

>1,000 plants = 25 years

2nd or Subsequent Offense

101-1,000 plants = 25 years

>1,000 plants = 25 years

“Trafficking” Cocaine, Crack, & Meth

1st Offense

10-28 gms = 1-5 years

28-100 gms = 5-15 years

100-200 gms = 15-25 years

>200 gms = 25-30 years

2nd Offense

10-28 gms = 5-15 years

28-100 gms = 15-25 years

100-200 gms = 25-30 years

>200 gms = 30 years

3rd Offense

10-28 gms = 15-25 years

28-100 gms = 25-30 years

100-200 gms = 30 years

>200 gms = 30 years

“Trafficking” Heroin

\*No changes

“Trafficking” Ecstasy

1st Offense

100-500 units = 3-10 years

500-1000 units = 7-25 years

> 1,000 units = 25 years

6. Establish controlled substance “Trafficking” offenses for all narcotic pharmaceuticals and some non-narcotic pharmaceuticals.

“Accommodation”

7. Expand “Accommodation” to include meth, crack, Schedule I (b) and (c) narcotic controlled substances, LSD, and Schedule II narcotic controlled substances.

“Felony Distribution”

8. Establish enhanced penalties for the “Distribution” of controlled substances resulting in serious injury or death.

“Shipping”

9. Establish a new felony offense or enhanced penalties for a person who uses the USPS, UPS, Fed Ex, etc., to ship controlled substances or proceeds of the same. The language would have to include shipping, receiving, or aiding in anyway.

**“Disturbing Schools”**

10. Provide that the offense of “Disturbing Schools” does not apply to a student, teacher, or other employee while on the premises of the school where he or she is enrolled or employed.

**“Robbery” and “Attempted Robbery”**

11. Establish statutory degrees of “Robbery” and “Attempted Robbery”.

**OTHER SENTENCING ISSUES**

**Bail**

12. Develop a voluntary risk assessment tool for judges to utilize in making bail decisions. The tool would assist judges in making more informed decisions as to those persons who present high risks of absconding or further committing crime

**Fiscal Impact Statements**

13. Require that a criminal law bill that establishes a new criminal offense or amends the sentencing provisions of an existing offense be introduced in the House or Senate, as applicable, by the first day of the legislative session.

**Sentencing Resources**

14. Provide judges with a two-tier voluntary risk assessment tool to utilize for post conviction sentencing of non-violent offenders who would otherwise go to prison. The tool would assist judges in making more informed decisions as to those persons who should go to prison and those persons who should receive some form of alternative sentencing.

**“Youthful Offender Act”**

15. Increase or decrease the age limit for participation in the “Youthful Offender Act” (YOA) program.

12/22/09 4:00 p.m.