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CHAPTER 25.

 CRIMINAL DOMESTIC VIOLENCE

ARTICLE 1.

 GENERAL PROVISIONS

**SECTION 16‑25‑10.** "Household member" defined.

 As used in this article, "household member" means:

 (1) a spouse;

 (2) a former spouse;

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

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

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 1, eff January 1, 2006.

**SECTION 16‑25‑20.** Acts prohibited; penalties; criminal domestic violence conviction in another state as prior offense.

 (A) It is unlawful to:

 (1) cause physical harm or injury to a person's own household member; or

 (2) offer or attempt to cause physical harm or injury to a person's own household member with apparent present ability under circumstances reasonably creating fear of imminent peril.

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

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

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

 (3) for a third or subsequent offense, the person is guilty of a felony and must be imprisoned not less than a mandatory minimum of one year but not more than five years.

 (C) For the purposes of subsections (A) and (B), a conviction within the previous ten years for a violation of subsection (A), Section 16‑25‑65, or a criminal domestic violence offense in another state which includes similar elements to the provisions of subsection (A) or Section 16‑25‑65, constitutes a prior offense. A conviction for a violation of a criminal domestic violence offense in another state does not constitute a prior offense if the offense is committed against a person other than a "household member" as defined in Section 16‑25‑10.

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

 (E) Unless the complaint is voluntarily dismissed or the charge is dropped prior to the scheduled trial date, a person charged with a violation provided in this chapter must appear before a judge for disposition of the case.

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

 (1) the offender completing, to the satisfaction of the court, a program designed to treat batterers;

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

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

 (G) In determining whether or not to suspend the imposition or execution of all or part of a sentence as provided in this section, the court must consider the nature and severity of the offense, the number of times the offender has repeated the offense, and the best interests and safety of the victim.

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

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 2, eff January 1, 2006; 2008 Act No. 255, Section 1, eff June 4, 2008.

**SECTION 16‑25‑30.** Possession of firearm by person convicted of domestic violence or domestic violence of high and aggravated nature; notice.

 At the time a person is convicted of violating the provisions of Section 16‑25‑20 or 16‑25‑65, the court must deliver to the person a written form that conspicuously bears the following language: "Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16‑25‑20 or 16‑25‑65 to ship, transport, possess, or receive a firearm or ammunition."

HISTORY: 2009 Act No. 59, Section 6, eff June 2, 2009.

**SECTIONS 16‑25‑40 to 16‑25‑60.** Omitted by 2003 Act No. 92, Section 3, eff January 1, 2004.

**SECTIONS 16‑25‑40 to 16‑25‑60.** Omitted by 2003 Act No. 92, Section 3, eff January 1, 2004.

**SECTIONS 16‑25‑40 to 16‑25‑60.** Omitted by 2003 Act No. 92, Section 3, eff January 1, 2004.

**SECTION 16‑25‑65.** Criminal domestic violence of a high and aggravated nature; elements; penalty; conditional probation; statutory offense.

 (A) A person who violates Section 16‑25‑20(A) is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs. The person commits:

 (1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; or

 (2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death.

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

 (C) The provisions of subsection (A) create a statutory offense of criminal domestic violence of a high and aggravated nature and must not be construed to codify the common law crime of assault and battery of a high and aggravated nature.

HISTORY: 1994 Act No. 516, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004; 2005 Act No. 166, Section 3, eff January 1, 2006.

**SECTION 16‑25‑70.** Warrantless arrest or search; admissibility of evidence.

 (A) A law enforcement officer may arrest, with or without a warrant, a person at the person's place of residence or elsewhere if the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony pursuant to the provisions of Section 16‑25‑20(A) or (D), 16‑25‑65, or 16‑25‑125, even if the act did not take place in the presence of the officer. The officer may, if necessary, verify the existence of probable cause related to a violation pursuant to the provisions of this chapter by telephone or radio communication with the appropriate law enforcement agency. A law enforcement agency must complete an investigation of an alleged violation of this chapter even if the law enforcement agency was not notified at the time the alleged violation occurred. If an arrest warrant is sought, the law enforcement agency must present the results of the investigation and any other relevant evidence to a magistrate who may issue an arrest warrant if probable cause is established.

 (B) A law enforcement officer must arrest, with or without a warrant, a person at the person's place of residence or elsewhere if physical manifestations of injury to the alleged victim are present and the officer has probable cause to believe that the person is committing or has freshly committed a misdemeanor or felony under the provisions of Section 16‑25‑20(A) or (D), or 16‑25‑65 even if the act did not take place in the presence of the officer. A law enforcement officer is not required to make an arrest if he determines probable cause does not exist after consideration of the factors set forth in subsection (D) and observance that no physical manifestation of injury is present. The officer may, if necessary, verify the existence of an order of protection by telephone or radio communication with the appropriate law enforcement agency.

 (C) In effecting a warrantless arrest under this section, a law enforcement officer may enter the residence of the person to be arrested in order to effect the arrest where the officer has probable cause to believe that the action is reasonably necessary to prevent physical harm or danger to a family or household member.

 (D) If a law enforcement officer receives conflicting complaints of domestic or family violence from two or more household members involving an incident of domestic or family violence, the officer must evaluate each complaint separately to determine who was the primary aggressor. If the officer determines that one person was the primary physical aggressor, the officer must not arrest the other person accused of having committed domestic or family violence. In determining whether a person is the primary aggressor, the officer must consider the following factors and any other factors he considers relevant:

 (1) prior complaints of domestic or family violence;

 (2) the relative severity of the injuries inflicted on each person taking into account injuries alleged which may not be easily visible at the time of the investigation;

 (3) the likelihood of future injury to each person;

 (4) whether one of the persons acted in self‑defense; and

 (5) household member accounts regarding the history of domestic violence.

 (E) A law enforcement officer must not threaten, suggest, or otherwise indicate the possible arrest of all parties to discourage a party's requests for intervention by law enforcement.

 (F) A law enforcement officer who arrests two or more persons for a crime involving domestic or family violence must include the grounds for arresting both parties in the written incident report, and must include a statement in the report that the officer attempted to determine which party was the primary aggressor pursuant to this section and was unable to make a determination based upon the evidence available at the time of the arrest.

 (G) When two or more household members are charged with a crime involving domestic or family violence arising from the same incident and the court finds that one party was the primary aggressor pursuant to this section, the court, if appropriate, may dismiss charges against the other party or parties.

 (H) Evidence discovered as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in a court of law:

 (1) if it is found:

 (a) in plain view of a law enforcement officer in a room in which the officer is interviewing, detaining, or pursuing a suspect; or

 (b) pursuant to a search incident to a lawful arrest for a violation of this article or for a violation of Chapter 3, Title 16; or

 (2) if it is evidence of a violation of this article.

 An officer may arrest and file criminal charges against a suspect for any offense that arises from evidence discovered pursuant to this section.

 Unless otherwise provided for in this section, no evidence of a crime found as a result of a warrantless search administered pursuant to a complaint filed under this article is admissible in any court of law.

 (I) In addition to the protections granted to the law enforcement officer and law enforcement agency under the South Carolina Tort Claims Act, a law enforcement officer is not liable for an act, omission, or exercise of discretion under this section unless the act, omission, or exercise of discretion constitutes gross negligence, recklessness, wilfulness, or wantonness.

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 1995 Act No. 83, Section 61; 1997 Act No. 120, Section 3; 2002 Act No. 329, Section 4, eff June 18, 2002; 2003 Act No. 92, Section 3, eff January 1, 2004; 2008 Act No. 319, Section 3, eff June 11, 2008.

**SECTION 16‑25‑80.** Effect on enforcement of contempt orders and police arrest powers; construction with assault and battery and other criminal offenses.

 Nothing in this article affects or limits the powers of any court to enforce its own orders by civil or criminal contempt or the powers of the police to make other lawful arrests.

 Nothing in this article may be construed to repeal, replace, or preclude application of any other provisions of law pertaining to assault, assault and battery, assault and battery of a high and aggravated nature, or other criminal offenses.

HISTORY: 1984 Act No. 484, Section 1; 1994 Act No. 519, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004.

**SECTION 16‑25‑90.** Parole eligibility as affected by evidence of domestic violence suffered at hands of household member.

 Notwithstanding any provision of Chapters 13 and 21 of Title 24, and notwithstanding any other provision of law, an inmate who was convicted of, or pled guilty or nolo contendere to, an offense against a household member is eligible for parole after serving one‑fourth of his prison term when the inmate at the time he pled guilty to, nolo contendere to, or was convicted of an offense against the household member, or in post‑ conviction proceedings pertaining to the plea or conviction, presented credible evidence of a history of criminal domestic violence, as provided in Section 16‑25‑20, suffered at the hands of the household member. This section shall not affect the provisions of Section 17‑27‑45.

HISTORY: 1995 Act No. 7, Part I Section 14; 1998 Act No. 401, Section 1; 2003 Act No. 92, Section 3, eff January 1, 2004.

**SECTION 16‑25‑100.** Judicial training on issues concerning domestic violence.

 Magistrates, municipal court judges, family court judges, and circuit court judges shall receive continuing legal education on issues concerning domestic violence. The frequency and content of the continuing legal education is to be determined by the South Carolina Court Administration at the direction of the Chief Justice of the South Carolina Supreme Court.

HISTORY: 2005 Act No. 166, Section 4, eff January 1, 2006.

**SECTION 16‑25‑120.** Release on bond; factors; issuance of restraining order; notice of right to counsel.

 (A) In addition to the provisions of Section 17‑15‑30, the court may consider the factors provided in subsection (B) when considering release of a person on bond who is charged with a violent offense, as defined in Section 16‑1‑60, when the victim of the offense is a household member, as defined in Section 16‑25‑10, and the person:

 (1) is subject to the terms of a valid order of protection or restraining order at the time of the offense in this State or another state; or

 (2) has a previous conviction involving the violation of a valid order of protection or restraining order in this State or another state.

 (B) The court may consider the following factors before release of a person on bond who is subject to the provisions of subsection (A):

 (1) whether the person has a history of criminal domestic violence, as defined in this article, or a history of other violent offenses, as defined in Section 16‑1‑60;

 (2) the mental health of the person;

 (3) whether the person has a history of violating the orders of a court or other governmental agency; and

 (4) whether the person poses a potential threat to another person.

 (C) When considering release of a person on bond under this section, the court must consider whether to issue a restraining order or order of protection provided for in Chapter 4 of Title 20 against the person. The court must consider the factors enumerated in subsection (B) of this section, and if it determines in its discretion that a restraining order or order of protection is required, it should issue the order or forward the matter to the appropriate court.

 (D)(1) At the bond hearing pursuant to the provisions of this section or another provision of law, the court shall inform in writing the person charged with a violation of Article 1, Chapter 25, Title 16 of his right to obtain counsel and, if indigent, his right to court‑appointed counsel along with instructions on how to obtain court‑appointed counsel.

 (2) If the court decides to release the person pending his trial, the court shall provide the person with a written notice that must conspicuously bear the following language:

 "Pursuant to Section 16‑25‑125 of the South Carolina Code of Laws, it is unlawful for a person who has been charged with or convicted of criminal domestic violence or criminal domestic violence of a high and aggravated nature, who is subject to an order of protection, or who is subject to a restraining order, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person's household member resides or the domestic violence shelter's administrative offices. A person who violates this provision is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.".

 (3) The court shall provide the person with an opportunity to sign the notice evidencing the person's acknowledgment of having received and read the notice.

HISTORY: 2005 Act No. 166, Section 5, eff January 1, 2006; 2008 Act No. 319, Section 4, eff June 11, 2008.

**SECTION 16‑25‑125.** Trespass upon grounds or structure of domestic violence shelter; penalty; notice.

 (A) For purposes of this section:

 (1) "Domestic violence shelter" means a facility whose purpose is to serve as a shelter to receive and house persons who are victims of criminal domestic violence and that provides services as a shelter.

 (2) "Grounds" means the real property of the parcel of land upon which a domestic violence shelter or a domestic violence shelter's administrative offices are located, whether fenced or unfenced.

 (3) "Household member" means a household member as defined in Section 16‑25‑10.

 (B) It is unlawful for a person who has been charged with or convicted of a violation of Section 16‑25‑20 or Section 16‑25‑65, who is subject to an order of protection issued pursuant to Chapter 4 of Title 20, or who is subject to a restraining order issued pursuant to Article 17, Chapter 3 of Title 16, to enter or remain upon the grounds or structure of a domestic violence shelter in which the person's household member resides or the domestic violence shelter's administrative offices.

 (C) The domestic violence shelter must post signs at conspicuous places on the grounds of the domestic violence shelter and the domestic violence shelter's administrative offices which, at a minimum, read substantially as follows:

"NO TRESPASSING

VIOLATORS WILL BE SUBJECT TO CRIMINAL PENALTIES".

 (D) This section does not apply if the person has legitimate business or any authorization, license, or invitation to enter or remain upon the grounds or structure of the domestic violence shelter or the domestic violence shelter's administrative offices.

 (E) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than three thousand dollars or imprisoned for not more than three years, or both. If the person is in possession of a dangerous weapon at the time of the violation, the person is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.

HISTORY: 2008 Act No. 319, Section 1, eff June 11, 2008.