**South Carolina General Assembly**

120th Session, 2013-2014

**H. 4790**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Allison, Felder, Cole, Forrester, Henderson, Nanney, Tallon and Wood

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Introduced in the House on February 26, 2014

Currently residing in the House Committee on **Judiciary**

Summary: Criminal Domestic Violence

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/26/2014 House Introduced and read first time ([House Journal‑page 58](file:///H:\HJ%20Archive\2014\02-26-14.docx))

2/26/2014 House Referred to Committee on **Judiciary** ([House Journal‑page 58](file:///H:\HJ%20Archive\2014\02-26-14.docx))

**VERSIONS OF THIS BILL**

[2/26/2014](file:///p:\pprever\2013-14\4790_20140226.docx)

**A** **BILL**

TO AMEND SECTION 16‑25‑120, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE RELEASE OF A PERSON ON BOND WHO IS CHARGED WITH A VIOLENT OFFENSE, SO AS TO ALLOW AN ALLEGED VICTIM TO PETITION THE COURT FOR AN ORDER OF PROTECTION AT THE HEARING IN THE EVENT THAT THE COURT RELEASES THE PERSON CHARGED WITH THE VIOLENT CRIME ON BOND; TO AMEND SECTION 20‑4‑20, RELATING TO DEFINITIONS PROVIDED FOR IN THE PROTECTION FROM DOMESTIC ABUSE ACT, SO AS TO CHANGE THE DEFINITION OF “COURT” TO INCLUDE MAGISTRATE AND MUNICIPAL COURTS DURING CERTAIN TIMES AND COURTS THAT CONDUCT THE BOND HEARING; TO AMEND SECTION 20‑4‑30, RELATING TO JURISDICTION OVER A PETITION FOR ISSUANCE OF AN ORDER OF PROTECTION IN DOMESTIC VIOLENCE ACTIONS, SO AS ALSO TO GIVE JURISDICTION TO COURTS CONDUCTING BOND HEARINGS AND MUNICIPAL COURTS IN CERTAIN CIRCUMSTANCES AND TO ALLOW A PETITION TO BE FILED AT THE BOND HEARING; TO AMEND SECTION 20‑4‑40, RELATING TO A PETITION FOR AN ORDER OF PROTECTION IN DOMESTIC VIOLENCE ACTIONS, SO AS TO ALLOW THE PETITION TO BE FILED AT THE BOND HEARING; TO AMEND SECTION 22‑5‑530, RELATING TO THE RIGHT OF A PERSON CHARGED WITH VIOLATION OF A LAW TO BE HEARD IN A MAGISTRATE OR MUNICIPAL COURT TO DEPOSIT MONEY INSTEAD OF ENTERING INTO RECOGNIZANCE, SO AS TO PROHIBIT A PERSON CHARGED WITH CRIMINAL DOMESTIC VIOLENCE FROM DEPOSITING MONEY IN LIEU OF PERSONAL RECOGNIZANCE.

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

SECTION 1. Section 16‑25‑120(C) of the 1976 Code, as added by Act 166 of 2005, is amended to read:

“(C) When considering release of a person on bond ~~under~~ pursuant to 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~~ the court determines in its discretion that a restraining order or order of protection is required, ~~it~~ the court should issue the order or forward the matter to the appropriate court. At the hearing, the alleged victim may petition the court for an order of protection pursuant to Chapter 4, Title 20.”

SECTION 2. Section 20‑4‑20 of the 1976 Code is amended to read:

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

~~(a)~~(1) ‘Abuse’ means:

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

~~(2)~~(b) sexual criminal offenses, as otherwise defined by statute, committed against a family or household member by a family or household member.

~~(b)~~(2) ‘Household member’ means:

~~(i )~~(a) a spouse;

~~(ii)~~(b) a former spouse;

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

~~(iv)~~(d) a male and female who are cohabiting or formerly have cohabited.

~~(c)~~(3) ‘Court’ means the family court, or the magistrate or municipal courts during nonbusiness hours or when the family court is not in session, or the court conducting the bond hearing of a violent offender.

~~(d)~~(4) ‘Petitioner’ means the person alleging abuse in a petition for an order of protection.

~~(e)~~(5) ‘Respondent’ in a petition for an order of protection means the person alleged to have abused another person or a person alleged to have aided and abetted ~~such~~ the abuse.

~~(f)~~(6) ‘Order of protection’ means an order of protection issued to protect the petitioner or minor household members from the abuse of another household member ~~where~~ when the respondent has received notice of the proceedings and has had an opportunity to be heard.”

SECTION 3. Section 20‑4‑30(A) of the 1976 Code is amended to read:

“(A) The family court has jurisdiction over all proceedings ~~under~~ pursuant to this chapter except that, during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a magistrate or a municipal court. The petition also may be made at the bond hearing of a criminal domestic or violent offender. The magistrate or municipal court or the court conducting the bond hearing may issue an order of protection granting only the relief provided by Section ~~20‑4‑60(a)(1)~~ 20‑4‑60(A)(1).”

SECTION 4. Section 20‑4‑40 of the 1976 Code is amended to read:

“Section 20‑4‑40. (A) There is created an action known as a ‘Petition for an Order of Protection’ in cases of abuse to a household member.

~~(a)~~(B) A petition for relief ~~under~~ pursuant to this section may be ~~made~~filed by ~~any~~a household ~~members~~member in need of protection or by ~~any~~a household ~~members~~member on behalf of a minor household ~~members~~member.

~~(b)~~(C) A petition for relief must allege the existence of abuse to a household member. It must state the specific time, place, details of the abuse, and other facts and circumstances upon which relief is sought and must be verified.

~~(c)~~(D) The petition must inform the respondent of the right to retain counsel.

~~(d)~~(E) In a pending action for divorce or separate support and maintenance, the petition for relief ~~shall~~must be brought in the form of a motion for further relief and ~~shall~~must be served on counsel of record, if any. Where no action is pending, the petition ~~shall~~must be filed and served as an independent action. A pending motion or petition for relief ~~shall~~must not be dismissed solely because the underlying action is dismissed.

~~(e)~~(F) The clerk of court must provide simplified forms ~~which~~that will facilitate the preparation and filing of a petition ~~under~~pursuant to this section by any person not represented by counsel, including motions and affidavits to proceed in forma pauperis.

~~(f)~~(G) The clerk of court may not charge a fee for filing a petition for an order for protection from domestic abuse.

(H) The petition provided for pursuant to this section also may be filed during the respondent defendant’s bond hearing pursuant to Section 16‑25‑120.”

SECTION 5. Section 22‑5‑530 of the 1976 Code is amended to read:

“Section 22‑5‑530. (A) A person charged and to be tried before a magistrate or municipal judge for a violation of law is entitled to deposit with the magistrate or municipal judge, in lieu of entering into recognizance, a sum of money not to exceed the maximum fine in the case for which the person is to be tried. However, the provisions of this section do not apply to a person charged with a violation of Chapter 25, Title 16, and this person is expressly prohibited from making a deposit in lieu of recognizance. An individualized hearing must be held when the person is charged with a violation of the provisions of Chapter 25, Title 16, and the victim of the offense must be notified pursuant to the provisions of Section 16‑3‑1525(H).

(B) In a jurisdiction in which the governing body has established a system for receipt of deposits in lieu of recognizance, a person held or incarcerated in a jail or detention center who is entitled to deposit a sum of money in lieu of entering into recognizance ~~under~~ pursuant to this section may secure his immediate release from custody by paying to or depositing the sum of money required by this section with the jail or detention facility in which he is being held.

(C) Money paid to or deposited with a jail or detention facility ~~under~~ pursuant to the authority of this section is considered paid to or deposited with the magistrate or municipal judge in lieu of entering into recognizance and must be accounted for and paid over to the magistrate or municipal judge by the jail or detention facility for disposition according to law. Money paid to or deposited pursuant to this section must be accounted for and audited in the manner required by the governing body and any other appropriate agency.

(D) The provisions of this section must not be construed to abrogate or otherwise affect the notice requirements for victims of crime and other rights of victims of crime provided for ~~in~~ pursuant to Article 5, ~~of~~ Title 16.”

SECTION 6. This act takes effect upon approval of the Governor.

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