COMMITTEE REPORT

March 22, 2017

**H. 3055**

Introduced by Reps. Robinson‑Simpson and Clyburn

S. Printed 3/22/17--H. [SEC 3/23/17 4:54 PM]

Read the first time January 10, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3055) to amend the Code of Laws of South Carolina, 1976, so as to enact the “Stop the School House to Jail House Pipeline Act” by creating, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, by deleting all after the enacting words and inserting:

/ SECTION 1. (A)(1) There is created a study committee that must be known as the Restorative Justice Study Committee to review the juvenile justice laws of the State and:

(a) make recommendations to the General Assembly concerning proposed changes to facilitate and encourage diversion of juveniles from the juvenile justice system to restorative justice practices:

(i) to provide data to assess the efficacy of restorative justice to reduce recidivism, to assist in repairing the harm caused to victims and the community, increase victim, offender, and community member satisfaction, and reduce cost; and to promote the restorative justice principles of reconciliation, responsibility, reintegration, respect, relationship‑building, and restitution; and

(ii) when diversion may prevent juveniles from committing additional criminal acts, restore victims of crime, facilitate the juveniles’ ability to pay restitution to victims of crime, and reduce the number of cases in the juvenile justice system. Restorative justice should ensure accountability while allowing juveniles to avoid the collateral consequences associated with criminal charges and convictions; and

(b) provide recommendations concerning the creation of a pilot restorative justice program. At a minimum, this pilot program must require the circuit solicitor, prior to filing charges, to assess if the juvenile is suitable for participation in the restorative justice pilot program, and if the assessment determines the juvenile is suitable, the circuit solicitor, after consultation with the victim, may offer the juvenile prefiling diversion to a program using restorative justice practices. If the juvenile accepts participation in the program using restorative justice practices, the circuit solicitor shall not file the petition. The circuit solicitor shall place the juvenile in a diversion program using restorative justice practices, and the juvenile shall pay a fee that may be reduced on sliding scale based on income consistent with guidelines used to determine eligibility for appointment of counsel. If the juvenile successfully completes the program, the circuit solicitor shall not file a petition against the juvenile for the alleged crimes that led to participation in the program. If the juvenile is charged with a new offense while in the program or does not successfully complete the program using restorative justice practices, the circuit solicitor may initiate a petition against the juvenile and shall proceed as authorized in this article. Any statements made during the conference are confidential and may not be used as a basis for charging or prosecuting the defendant unless the defendant commits a chargeable offense during the conference. Each participant in the restorative justice program shall complete the uniform restorative justice satisfaction evaluation. Fees collected pursuant to the pilot program must be credited to a separate fund in the State Treasury styled the ‘Restorative Justice Account’, and the earnings on this account must be credited to it. Restorative Justice Account proceeds only may be used for the pilot program and restorative justice measures for juveniles as the General Assembly provides by law.

(2) For the purposes of the Restorative Justice Study Committee, ‘restorative justice practices’ means practices that emphasize repairing the harm caused to victims and the community by offenses. Restorative justice practices include victim initiated victim‑offender conferences, family group conferences, circles, community conferences, and other similar victim‑centered practices. Restorative justice practices must be facilitated meetings attended voluntarily by the victim or victim’s representatives, the victim’s supporters, the offender, and the offender’s supporters and may include community members. By engaging the parties to the offense in voluntary dialogue, restorative justice practices provide an opportunity for the offender to accept responsibility for the harm caused to the victim and community, promote victim healing, and enable the participants to agree on consequences to repair the harm, to the extent possible, including, but not limited to, apologies, community service, reparation, restoration, and counseling. Restorative justice practices may be used in addition to any other conditions, consequences, or sentences imposed by the court. Restorative justice practices include, but must be not limited to, victim‑offender conferences, family group conferences, restorative circles of accountability and support, community group conferences, solution circles, peace circles, restorative circles, and restorative mediation. These practices may benefit and include harmed parties, people who have done harm and must be willing to take responsibility, and affected family, community, and other directly impacted members.

(B) The study committee must be composed of five members of the Senate, appointed by the Chairman of the Senate Judiciary Committee, and five members of the House of Representatives, appointed by the Chairman of the House Judiciary Committee. The study committee shall review corresponding restorative justice laws in other states in order to determine whether amendments should be proposed to the state’s existing laws.

(C) Vacancies in the membership of the study committee must be filled for the remainder of the unexpired term in the manner of original appointment.

(D) The Chairman of the Senate Judiciary Committee and the Chairman of the House Judiciary Committee shall provide appropriate staffing for the study committee.

(E) The study committee shall make a report of its recommendations to the General Assembly by March 1, 2018, at which time the study committee must be dissolved.

SECTION 2. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 3. This act takes effect upon approval of the Governor. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “STOP THE SCHOOL HOUSE TO JAIL HOUSE PIPELINE ACT” BY CREATING THE RESTORATIVE JUSTICE STUDY COMMITTEE TO REVIEW THE JUVENILE JUSTICE LAWS OF THE STATE AND MAKE RECOMMENDATIONS CONCERNING PROPOSED CHANGES TO FACILITATE AND ENCOURAGE DIVERSION OF JUVENILES FROM THE JUVENILE JUSTICE SYSTEM TO RESTORATIVE JUSTICE PRACTICES FOR SPECIFIC PURPOSES AND IN CERTAIN CIRCUMSTANCES, TO PROVIDE THE STUDY COMMITTEE SHALL MAKE RECOMMENDATIONS CONCERNING A RELATED PILOT PROGRAM, TO PROVIDE SPECIFIC REQUIREMENTS FOR THE PILOT PROGRAM, AND TO DEFINE A NECESSARY TERM; BY ADDING SECTION 59‑63‑212 SO AS TO PROVIDE THAT SCHOOL DISTRICTS SHALL ADOPT ZERO‑TOLERANCE POLICIES THAT NOT BE RIGOROUSLY APPLIED TO PETTY ACTS OF MISCONDUCT AND MISDEMEANORS, MUST APPLY EQUALLY TO ALL STUDENTS REGARDLESS OF THEIR ECONOMIC STATUS, RACE, OR DISABILITY, AND THAT ARE INTENDED TO PROMOTE SAFE AND SUPPORTIVE LEARNING ENVIRONMENTS IN SCHOOLS, PROTECT STUDENTS AND STAFF FROM CONDUCT THAT POSES A SERIOUS THREAT TO SCHOOL SAFETY, ENCOURAGES SCHOOLS TO USE ALTERNATIVES TO EXPULSION OR REFERRAL, AMONG OTHER THINGS; BY ADDING SECTION 23‑23‑117 SO AS TO PROVIDE THAT THE CRIMINAL JUSTICE ACADEMY SHALL DEVELOP AND IMPLEMENT A CULTURAL COMPETENCY MODEL TRAINING PROGRAM CURRICULUM FOR SCHOOL RESOURCE OFFICERS, TO PROVIDE CONTENT REQUIREMENTS FOR THE CURRICULUM, AND TO REQUIRE SCHOOL RESOURCE OFFICERS TO COMPLETE TRAINING BASED ON THE CURRICULUM; AND TO REPEAL SECTIONS 59‑63‑235 AND 59‑63‑240 BOTH RELATING TO STUDENT EXPULSIONS.

Whereas, the South Carolina General Assembly finds that a safe and well‑educated population is fundamental to the stability and growth of our State and nation; and

Whereas, the South Carolina General Assembly finds that providing a safe and secure learning environment not only greatly enhances the ability of a student to learn, but is also an obligation the State has to these young citizens and their dedicated teachers and school staff members; and

Whereas, the South Carolina General Assembly finds that in zealously engaging in efforts to provide a safe and secure learning environment for all, we must be wary of creating unintended consequences that have an unduly harsh and counterproductive impact on some students who need help the most; and

Whereas, the South Carolina General Assembly finds that current practices in our schools regarding restorative justice, zero‑tolerance policies, and policing in schools have unfortunately caused negative effects that outweigh their benefits by creating what amounts to a pipeline from the school house to the jail house for many young people, particularly from minority communities and disadvantaged backgrounds, and taking corrective action is imperative for the good of our State. Now, therefore,

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

SECTION 1. This act must be known and may be cited as the “Stop the School House to Jail House Pipeline Act”.

Part I

Restorative Justice Study Committee

SECTION 2. (A)(1) There is created a study committee that must be known as the Restorative Justice Study Committee to review the juvenile justice laws of the State and:

(a) make recommendations to the General Assembly concerning proposed changes to facilitate and encourage diversion of juveniles from the juvenile justice system to restorative justice practices:

(i) to provide data to assess the efficacy of restorative justice to reduce recidivism, to assist in repairing the harm caused to victims and the community, increase victim, offender, and community member satisfaction, and reduce cost; and to promote the restorative justice principles of reconciliation, responsibility, reintegration, respect, relationship‑building, and restitution; and

(ii) when diversion may prevent juveniles from committing additional criminal acts, restore victims of crime, facilitate the juveniles’ ability to pay restitution to victims of crime, and reduce the number of cases in the juvenile justice system. Restorative justice should ensure accountability while allowing juveniles to avoid the collateral consequences associated with criminal charges and convictions; and

(b) provide recommendations concerning the creation of a pilot restorative justice program. At a minimum, this pilot program must require the circuit solicitor, prior to filing charges, to assess if the juvenile is suitable for participation in the restorative justice pilot program, and if the assessment determines the juvenile is suitable, the circuit solicitor, after consultation with the victim, may offer the juvenile prefiling diversion to a program using restorative justice practices. If the juvenile accepts participation in the program using restorative justice practices, the circuit solicitor shall not file the petition. The circuit solicitor shall place the juvenile in a diversion program using restorative justice practices, and the juvenile shall pay a fee that may be reduced on sliding scale based on income consistent with guidelines used to determine eligibility for appointment of counsel. If the juvenile successfully completes the program, the circuit solicitor shall not file a petition against the juvenile for the alleged crimes that led to participation in the program. If the juvenile is charged with a new offense while in the program or does not successfully complete the program using restorative justice practices, the circuit solicitor may initiate a petition against the juvenile and shall proceed as authorized in this article. Any statements made during the conference are confidential and may not be used as a basis for charging or prosecuting the defendant unless the defendant commits a chargeable offense during the conference. Each participant in the restorative justice program shall complete the uniform restorative justice satisfaction evaluation. Fees collected pursuant to the pilot program must be credited to a separate fund in the State Treasury styled the ‘Restorative Justice Account’, and the earnings on this account must be credited to it. Restorative Justice Account proceeds only may be used for the pilot program and restorative justice measures for juveniles as the General Assembly provides by law.

(2) For the purposes of the Restorative Justice Study Committee, ‘restorative justice practices’ means practices that emphasize repairing the harm caused to victims and the community by offenses. Restorative justice practices include victim initiated victim‑offender conferences, family group conferences, circles, community conferences, and other similar victim‑centered practices. Restorative justice practices must be facilitated meetings attended voluntarily by the victim or victim’s representatives, the victim’s supporters, the offender, and the offender’s supporters and may include community members. By engaging the parties to the offense in voluntary dialogue, restorative justice practices provide an opportunity for the offender to accept responsibility for the harm caused to the victim and community, promote victim healing, and enable the participants to agree on consequences to repair the harm, to the extent possible, including, but not limited to, apologies, community service, reparation, restoration, and counseling. Restorative justice practices may be used in addition to any other conditions, consequences, or sentences imposed by the court. Restorative justice practices include, but must be not limited to, victim‑offender conferences, family group conferences, restorative circles of accountability and support, community group conferences, solution circles, peace circles, restorative circles, and restorative mediation. These practices may benefit and include harmed parties, people who have done harm and must be willing to take responsibility, and affected family, community, and other directly impacted members.

(B) The study committee must be composed of five members of the Senate, appointed by the Chairman of the Senate Medical Affairs Committee, and five members of the House of Representatives, appointed by the Chairman of the House Medical, Military, Public and Municipal Affairs Committee. The study committee shall review corresponding restorative justice laws in other states in order to determine whether amendments should be proposed to the state’s existing laws.

(C) Vacancies in the membership of the study committee must be filled for the remainder of the unexpired term in the manner of original appointment.

(D) The Chairman of the Senate Medical Affairs Committee and the Chairman of the House Medical, Military, Public and Municipal Affairs Committee shall provide appropriate staffing for the study committee.

(E) The study committee shall make a report of its recommendations to the General Assembly by February 1, 2018, at which time the study committee must be dissolved.

Part II

Common Sense Zero‑Tolerance Policies

SECTION 3. Article 3, Chapter 63, Title 59 of the 1976 Code is amended by adding:

“Section 59‑63‑212. (A) It is the policy of this State to promote a safe and supportive learning environment in schools, to protect students and staff from conduct that poses a serious threat to school safety, and to encourage schools to use alternatives to expulsion or referral to law enforcement agencies by addressing disruptive behavior through restitution, civil citation, teen court, neighborhood restorative justice, or similar programs. Consequently, zero‑tolerance policies must not be rigorously applied to petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances. Zero‑tolerance policies must apply equally to all students regardless of their economic status, race, or disability.

(B) Each district school board shall adopt a policy of zero tolerance that:

(1) defines criteria for reporting to a law enforcement agency an act that occurs in a time or place where students are within the jurisdiction of the district school board;

(2) defines acts that pose a serious threat to school safety;

(3) defines petty acts of misconduct;

(4) minimizes the victimization of students, staff, or volunteers, including taking all steps necessary to protect the victim of a violent crime from further victimization; and

(5) establishes a procedure that provides each student with the opportunity for a review of the disciplinary action involving a zero‑tolerance violation.

(C)(1) A zero‑tolerance policy must require a student found to have committed one of the following offenses to be expelled, with or without continuing educational services, from the student’s regular school for a period of not less than one full year, and to be referred to the criminal justice or juvenile justice system:

(a) bringing a firearm or other deadly weapon to a school, to a school function, or on school‑sponsored transportation;

(b) making a threat or false report involving school or school personnel’s property, school transportation, or a school‑sponsored activity; or

(c) both.

(2) A district school board may assign the student to a disciplinary program for the purpose of continuing educational services during the period of expulsion. A district school superintendent may consider the one‑year expulsion requirement on a individual basis and request the district school board to modify the requirement by assigning the student to a disciplinary program or an alternative school if the request for modification is in writing and it is determined to be in the best interest of the student and the school system. If a student committing an offense in this subsection is a student who has a disability, the district school board shall comply with applicable State Board of Education rules and regulations.

(D)(1) A district school board shall enter into agreements with the county sheriff’s office and local police department specifying guidelines for ensuring that acts that pose a serious threat to school safety, whether committed by a student or adult, are reported to a law enforcement agency.

(2) The agreements required pursuant to item (1) must include the role of school resource officers, if applicable, in handling reported incidents, circumstances in which school officials may handle incidents without filing a report with a law enforcement agency, and a procedure for ensuring that school personnel properly report appropriate delinquent acts and crimes.

(3) A zero‑tolerance policy does not require the reporting of petty acts of misconduct and misdemeanors to a law enforcement agency.

(4) The school principal shall ensure that all school personnel are properly informed as to their responsibilities regarding crime reporting, that appropriate delinquent acts and crimes are properly reported, and that actions taken in cases with special circumstances are properly taken and documented.

(E) Notwithstanding any other provision of law, each district school board shall adopt rules providing that any student found to have committed any offense in Section 16‑3‑1040, disturbing schools as provided in Section 16‑3‑1420, must be expelled or placed in an alternative school setting or other program, as appropriate. Upon being charged with the offense, the student must be removed from the classroom immediately and placed in an alternative school setting pending disposition.

(F) Any disciplinary or prosecutorial action taken against a student who violates a zero‑tolerance policy must be based on the particular circumstances of the student’s misconduct.

(G) School districts are encouraged to use alternatives to expulsion or referral to law enforcement agencies unless the use of such alternatives will pose a threat to school safety.

(H) To the extent a provision of this section conflicts with another provision of this chapter, the provisions of this section must prevail.”

Part III

Policing in Schools

SECTION 4. Chapter 23, Title 23 of the 1976 Code is amended by adding:

“Section 23‑23‑117. (A) Before January 1, 2018, the Criminal Justice Academy shall develop and implement a cultural competency model training program curriculum for school resource officers. The cultural competency model training program curriculum must:

(1) teach behaviors, attitudes, and policies that enable law enforcement officers to understand, communicate with, and effectively interact with the individuals, organizations, and institutions in the community in the public school to which a law enforcement officer is assigned is located;

(2) provide personal exposure to the individuals, organizations, and institutions within the assigned community; and

(3) provide knowledge of governmental and community services available to help prevent juvenile arrests.

(B) A person serving as a school resource officer on December 31, 2017, must complete the cultural competency training program provided in subsection (A) before January 1, 2019, in addition to satisfying other applicable requirements. After December 31, 2018, a person may not begin his initial assignment as a school resource officer without completing the cultural competency program provided in subsection (A) and other applicable requirements.”

Part IV

Miscellaneous Provisions

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. Sections 59‑63‑235 and 59‑63‑240 of the 1976 Code are repealed.

SECTION 7. Except as otherwise provided herein, this act takes effect upon approval of the Governor.

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