COMMITTEE REPORT

May 3, 2017

**H. 3055**

Introduced by Reps. Robinson‑Simpson, Clyburn, Gilliard, Mack, King and Henegan

S. Printed 5/3/17--S.

Read the first time March 29, 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 the Restorative Justice, etc., respectfully

**REPORT:**

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

BRAD HUTTO for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by the House of Representatives on March 28, 2017**

**State Expenditure**

This bill creates the Restorative Justice Study Committee. The study committee will 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. Also the committee will make recommendations concerning the creation of a pilot restorative justice program. The restorative justice program must require the circuit solicitor, prior to filing charges, to assess if the juvenile is suitable for participating in the program and, after consulting with the victim, offer the juvenile pre-filing diversion to a program using restorative justice practices. If the juvenile accepts, the solicitor will not file the petition and for a fee the juvenile will be enrolled in the program. If the juvenile completes the program, without being charged with new offenses while in the program, the solicitor will not file a petition for the alleged charges against the juvenile. The committee will make a report to the General Assembly by March 1, 2018, at which time the committee will dissolve.

**Senate and House of Representatives.** This ten member study committee will consist of five members from the Senate, appointed by the Chairman of the Senate Judiciary Committee and five members from the House of Representatives, appointed by the Chairman of the House Judiciary. Each member will receive per diem of $35, subsistence of $195.53, and mileage for each meeting on non-session days. These expenses will be managed within the budgets of the appointees’ respective legislative bodies. Additionally, the staffing for this committee will be provided by the Chairmen of the Senate and House of Representatives Judiciary Committees and will be managed with existing staff and within existing appropriations.  Therefore, the bill does not have an expenditure impact on the general fund, other funds, or federal funds for the Senate or the House of Representatives.

**Commission on Prosecution Coordination.** This bill requires the study committee to provide recommendations concerning the creation of a pilot restorative justice program. The bill specifies some minimum requirements for the program including actions that must be taken by circuit solicitors but does not establish the program itself. Because the bill only creates a study committee, not the restorative justice program, there is no expenditure impact on the general fund, other funds, or federal funds for the Commission on Prosecution Coordination.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**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. (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.

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