~~Indicates Matter Stricken~~

Indicates New Matter

AS PASSED BY THE SENATE

April 9, 2019

**S. 189**

Introduced by Senators Shealy, Hutto and Jackson

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Read the first time January 8, 2019.

**A** **BILL**

TO AMEND SECTION 63-7-1640(C)(1)(d) OF THE 1976 CODE, RELATING TO FAMILY PRESERVATION AND REUNIFICATION, TO ALLOW THE DEPARTMENT OF SOCIAL SERVICES TO FOREGO REASONABLE EFFORTS TO REUNIFY A FAMILY IN THE CASE OF TORTURE; TO AMEND SECTION 63-7-2570 OF THE 1976 CODE, RELATING TO GROUNDS FOR TERMINATION OF PARENTAL RIGHTS, TO ADD TORTURE, OR CONSPIRING TO COMMIT TORTURE, AS A GROUND FOR TERMINATING A PARENT’S RIGHTS; TO AMEND SECTION 16-3-85 (A) AND (C) OF THE 1976 CODE, RELATING TO HOMICIDE BY CHILD ABUSE, TO ADD DEATH OF A CHILD BY TORTURE, OR BY CONSPIRING TO TORTURE, AS ACTIONS CONSTITUTING THE OFFENSE, AND TO ESTABLISH CRIMINAL PENALTIES; TO AMEND ARTICLE 1, CHAPTER 3, TITLE 16 OF THE 1976 CODE, RELATING TO HOMICIDE, BY ADDING SECTION 16-3-100, TO PROVIDE THAT TORTURING A CHILD, OR ALLOWING ANOTHER TO TORTURE A CHILD, IS A CRIMINAL OFFENSE, AND TO ESTABLISH PENALTIES; AND TO DEFINE NECESSARY TERMS.

Amend Title To Conform

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

SECTION 1. Section 63‑7‑20(6)(a)(vi) of the 1976 Code is amended to read:

“(vi) commits torture or allows torture to be committed against the child; or

(vii) has committed abuse or neglect as described in subsubitems (i) through ~~(v)~~(vi) such that a child who subsequently becomes part of the person’s household is at substantial risk of one of those forms of abuse or neglect; or”

SECTION 2. Section 63‑7‑20 of the 1976 Code is amended by adding an appropriately numbered new item to read:

“( ) The definition of ‘torture’ is as defined by Section 16‑3‑100.”

SECTION 3. Section 63‑7‑1640(C)(1)(d) of the 1976 Code is amended to read:

“(d) acts ~~the judge finds~~ that constitute torture; or”

SECTION 4. Section 63‑7‑2570 of the 1976 Code is amended by adding an appropriately numbered new item at the end to read:

“( ) A parent has committed torture, has aided or abetted in committing torture, or has conspired to or knowingly allowed another to commit torture against the child.”

SECTION 5. Section 16‑3‑85 of the 1976 Code is amended to read:

“Section 16-3-85. (A) A person is guilty of homicide by child abuse if the person:

(1) causes the death of a child under the age of eleven while committing child abuse or neglect, and the death occurs under circumstances manifesting an extreme indifference to human life; ~~or~~

(2) knowingly aids and abets another person to commit child abuse or neglect, and the child abuse or neglect results in the death of a child under the age of eleven;

(3) causes the death of a child while committing torture, as defined in Section 16‑3‑100; or

(4) knowingly aids and abets another person to commit torture, as defined in Section 16‑3‑100, and the torture results in the death of a child.

(B) For purposes of this section, the following definitions apply:

(1) ‘child abuse or neglect’ means an act or omission by any person which causes harm to the child’s physical health or welfare;

(2) ‘harm’ to a child’s health or welfare occurs when a person:

(a) inflicts or allows to be inflicted upon the child physical injury, including injuries sustained as a result of excessive corporal punishment;

(b) fails to supply the child with adequate food, clothing, shelter, or health care, and the failure to do so causes a physical injury or condition resulting in death; or

(c) abandons the child resulting in the child’s death.

(C) Homicide by child abuse is a felony and a person who is convicted of or pleads guilty to homicide by child abuse:

(1) under subsection (A)(1) may be imprisoned for life but not less than a term of twenty years; ~~or~~

(2) under subsection (A)(2) must be imprisoned for a term not exceeding twenty years nor less than ten years;

(3) under subsection (A)(3) must be imprisoned for life; or

(4) under subsection (A)(4) must be imprisoned for a term of not less than twenty years.

(D) In sentencing a person under this section, the judge must consider any aggravating circumstances including, but not limited to, a defendant’s past pattern of child abuse or neglect of a child under the age of eleven, and any mitigating circumstances; however, a child’s crying does not constitute provocation so as to be considered a mitigating circumstance.

(E) Prosecution or conviction under this section shall not preclude a prosecution for any other applicable offense, including, but not limited to, murder.”

SECTION 6. Article 1, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑100. (A) For purposes of this section:

(1) ‘Torture’ means acts or omissions that:

(a)(i) include one or more of the following:

(A) a pattern of assaults;

(B) psychological maltreatment; or

(C) omissions of care;

(ii) are committed upon a child for the purpose of causing severe physical, mental, or emotional pain, which occurs over a period of time, resulting in serious physical or psychological injury or impairment, prolonged suffering, or the risk of permanent disfigurement, dysfunction, or death; and

(iii) are done with malice or an extreme indifference to the well-being of the child.

(b) Torture includes, but is not limited to:

(i) the infliction of severe physical or emotional pain upon a child repeatedly for the purpose of terrorizing the child;

(ii) the unreasonable or extended binding, restraint, or confinement of a child that results in prolonged suffering or serious physical or psychological injury; or

(iii) the intentional refusal to provide for the health, safety, medical, or nutritional needs of a child for an extended period of time such that the child suffers or risks serious physical, mental, or emotional harm.

(2) ‘Over a period of time’ includes a single lengthy tortuous action that occurs for an extended time within a single day or longer, or a pattern of more than one torturous action over the course of a single day, multiple days, or longer.

(B) It is unlawful for a person to torture a child within his custody or physical control, or knowingly assist, aid, or abet the torture of a child. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, may be imprisoned for life but otherwise must be imprisoned for a term not less than twenty years.

(C) It is unlawful for a child’s parent or guardian, an adult with whom the child’s parent or guardian is cohabitating, or any other person responsible for a child’s welfare as defined in Section 63‑7‑20 knowingly to allow another person to torture a child. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be imprisoned for a term of not more than thirty but not less than ten years.”

SECTION 7. Section 16‑1‑60 of the 1976 Code is amended to read:

“Section 16‑1‑60. For purposes of definition under South Carolina law, a violent crime includes the offenses of: murder (Section 16‑3‑10); attempted murder (Section 16‑3‑29); assault and battery by mob, first degree, resulting in death (Section 16‑3‑210(B)), criminal sexual conduct in the first and second degree (Sections 16‑3‑652 and 16‑3‑653); criminal sexual conduct with minors, first, second, and third degree (Section 16‑3‑655); assault with intent to commit criminal sexual conduct, first and second degree (Section 16‑3‑656); assault and battery with intent to kill (Section 16‑3‑620); assault and battery of a high and aggravated nature (Section 16‑3‑600(B)); kidnapping (Section 16‑3‑910); trafficking in persons (Section 16‑3‑2020); voluntary manslaughter (Section 16‑3‑50); armed robbery (Section 16‑11‑330(A)); attempted armed robbery (Section 16‑11‑330(B)); carjacking (Section 16‑3‑1075); drug trafficking as defined in Section 44‑53‑370(e) or trafficking cocaine base as defined in Section 44‑53‑375(C); manufacturing or trafficking methamphetamine as defined in Section 44‑53‑375; arson in the first degree (Section 16‑11‑110(A)); arson in the second degree (Section 16‑11‑110(B)); burglary in the first degree (Section 16‑11‑311); burglary in the second degree (Section 16‑11‑312(B)); engaging a child for a sexual performance (Section 16‑3‑810); homicide by child abuse (Section 16‑3‑85~~(A)(1)~~); aiding and abetting homicide by child abuse (Section 16‑3‑85(A)(2)); inflicting great bodily injury upon a child (Section 16‑3‑95(A)); allowing great bodily injury to be inflicted upon a child (Section 16‑3‑95(B)); torture of a child (16‑3‑100(B)); domestic violence of a high and aggravated nature (Section 16‑25‑65); domestic violence in the first degree (Section 16‑25‑20(B)); abuse or neglect of a vulnerable adult resulting in death (Section 43‑35‑85(F)); abuse or neglect of a vulnerable adult resulting in great bodily injury (Section 43‑35‑85(E)); taking of a hostage by an inmate (Section 24‑13‑450); detonating a destructive device upon the capitol grounds resulting in death with malice (Section 10‑11‑325(B)(1)); spousal sexual battery (Section 16‑3‑615); producing, directing, or promoting sexual performance by a child (Section 16‑3‑820); sexual exploitation of a minor first degree (Section 16‑15‑395); sexual exploitation of a minor second degree (Section 16‑15‑405); promoting prostitution of a minor (Section 16‑15‑415); participating in prostitution of a minor (Section 16‑15‑425); aggravated voyeurism (Section 16‑17‑470(C)); detonating a destructive device resulting in death with malice (Section 16‑23‑720(A)(1)); detonating a destructive device resulting in death without malice (Section 16‑23‑720(A)(2)); boating under the influence resulting in death (Section 50‑21‑113(A)(2)); vessel operator’s failure to render assistance resulting in death (Section 50‑21‑130(A)(3)); damaging an airport facility or removing equipment resulting in death (Section 55‑1‑30(3)); failure to stop when signaled by a law enforcement vehicle resulting in death (Section 56‑5‑750(C)(2)); interference with traffic‑control devices, railroad signs, or signals resulting in death (Section 56‑5‑1030(B)(3)); hit and run resulting in death (Section 56‑5‑1210(A)(3)); felony driving under the influence or felony driving with an unlawful alcohol concentration resulting in death (Section 56‑5‑2945(A)(2)); putting destructive or injurious materials on a highway resulting in death (Section 57‑7‑20(D)); obstruction of a railroad resulting in death (Section 58‑17‑4090); accessory before the fact to commit any of the above offenses (Section 16‑1‑40); and attempt to commit any of the above offenses (Section 16‑1‑80). Only those offenses specifically enumerated in this section are considered violent offenses.”

SECTION 8. This act takes effect upon approval by the Governor.

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