COMMITTEE REPORT

March 17, 2021

**H. 3620**

Introduced by Reps. Gilliard, W. Newton, Bernstein, Hyde, Simrill, Rutherford, Lucas, Dillard, Erickson, Hart, Kimmons, Pope, Stavrinakis, Thigpen, Wheeler, Alexander, Kirby, Henegan, Pendarvis, Herbkersman, Collins, McDaniel, Ott, Cobb‑Hunter, R. Williams, Murray, Brawley, Govan, Henderson‑Myers, Carter, Rose, Tedder, J.L. Johnson and Wetmore

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Read the first time January 12, 2021.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3620) to amend the Code of Laws of South Carolina, 1976, by adding Article 22 to Chapter 3, Title 16 so as to entitle the Article “Penalty Enhancements for Certain Crimes”, 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 striking all after the enacting words and inserting:

/ SECTION 1. This act may be cited as the “Clementa C. Pinckney Hate Crimes Act.”

SECTION 2. Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Article 22

Penalty Enhancements for Certain Crimes

Section 16‑3‑2410. (A)(1) When a person commits a violent crime as defined in Section 16‑1‑60 or commits assault by mob in the second degree as defined in Section 16‑3‑210(C) and the trier of fact determines beyond a reasonable doubt that the offense was committed against a victim who was intentionally selected in whole or in part because of the person’s belief or perception regarding the victim’s race, color, religion, sex, gender, national origin, sexual orientation, or physical or mental disability, whether or not the perception is correct, the person is subject to additional penalties as provided in subsection (B).

(2) For purposes of this article, the definition of ‘sex’ shall conform to the definition as set forth in the majority’s holding in *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731 (2020).

(B) A person who violates the provisions of subsection (A) and commits a violent crime as defined in Section 16‑1‑60 or commits assault by mob in the second degree as defined in Section 16‑3‑210(C), upon conviction, is subject to an additional fine of not more than ten thousand dollars and an additional term of imprisonment of up to five years;

(C) The provisions of this section provide for the enhancement of the penalties applicable to underlying offenses. The court shall permit the prosecuting agency and the defense to present evidence relevant to the determination of whether the defendant intentionally selected the person against whom the offense is committed in whole or in part because of the person’s belief or perception regarding one or more of the factors provided in subsection (A), whether or not the perception is correct. The court with competent jurisdiction over the underlying offense shall instruct the trier of fact to find a special verdict as to a violation of the provisions of this section.

(D) The additional penalties described in subsection (B) may not be imposed unless the person was indicted, either separately or as a separate count in the indictment for the underlying offense, for the offense pursuant to this section committed against the victim who was intentionally selected, in whole or in part, because of the person’s belief or perception regarding one or more of the factors provided in subsection (A), whether or not the perception is correct, and the person was found guilty of the underlying offense.”

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

Renumber sections to conform.

Amend title to conform.

CHRIS MURPHY for Committee.

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 22 TO CHAPTER 3, TITLE 16 SO AS TO ENTITLE THE ARTICLE “PENALTY ENHANCEMENTS FOR CERTAIN CRIMES”, TO PROVIDE ADDITIONAL PENALTIES FOR PERSONS WHO COMMIT CERTAIN DELINEATED CRIMES WHEN THE VICTIM WAS INTENTIONALLY SELECTED BASED ON CERTAIN FACTORS, AND TO PROVIDE VICTIMS OF A VIOLATION OF THE ARTICLE MAY BRING A CIVIL ACTION FOR DAMAGES SUSTAINED.

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

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

“Article 22

Penalty Enhancements for Certain Crimes

Section 16‑3‑2410. (A) When a person commits a violent crime as defined in Section 16‑1‑60, a harassment or stalking offense pursuant to Article 17, or a malicious injury offense as provided in Section 16‑11‑510 or 16‑11‑520, and the trier of fact determines beyond a reasonable doubt that the offense was committed against a victim who was intentionally selected, or the property of the victim was intentionally selected, in whole or in part, because of the person’s belief or perception regarding the victim’s race, color, creed, religion, sex, gender, age, national origin, ancestry, sexual orientation, or physical or mental disability, whether or not the perception is correct, the person is subject to additional penalties as provided in subsection (B).

(B) A person who violates the provisions of subsection (A) and commits a:

(1) violent crime as defined in Section 16‑1‑60, upon conviction, is subject to an additional fine of not more than ten thousand dollars and the maximum penalty for the underlying offense may be increased by an additional five years;

(2) stalking or harassment offense as provided in Article 17, upon conviction, is subject to an additional fine of not more than five thousand dollars and the maximum penalty for the underlying offense may be increased by an additional three years;

(3) malicious injury offense as provided in Section 16‑11‑510 or 16‑11‑520, upon conviction, is subject to an additional fine of not more than one thousand dollars and the maximum penalty for the underlying offense may be increased by an additional one year.

(C) The provisions of this section provide for the enhancement of the penalties applicable to underlying offenses.The court shall permit the prosecuting agency and the defense to present evidence relevant to the determination of whether the defendant intentionally selected the person against whom the offense is committed, or selected the property that is damaged, in whole or in part, because of the person’s belief or perception regarding one or more of the factors provided in subsection (A), whether or not the perception is correct. The court with competent jurisdiction over the underlying offense shall instruct the trier of fact to find a special verdict as to a violation of the provisions of this section.

(D) The additional penalties described in subsection (B) may not be imposed unless the person was indicted, either separately or as a separate count in the indictment for the underlying offense, for the offense pursuant to this section committed against the victim who was intentionally selected, in whole or in part, because of the person’s belief or perception regarding one or more of the factors provided in subsection (A), whether or not the perception is correct; and the person was found guilty of the underlying offense.

Section 16‑3‑2420. Independent of a criminal prosecution or the result of a criminal prosecution pursuant to the provisions of this article, any person suffering injury to his person or damage to his property as a result of a violation of this article may bring a civil action for damages, injunction, or other appropriate relief. The court may award actual damages, including damages for emotional distress, as well as punitive damages. The court may impose a civil penalty of not more than twenty‑five thousand dollars for each violation of the provisions of this article. A judgment in favor of a person who brings a civil action pursuant to this article shall include attorney’s fees and costs.”

SECTION 2. This act takes effect upon approval by the Governor.

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