**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4272**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Crosby, Brantley, Anderson, Merrill, Battle, Branham, Clyburn, Daning, Hayes, Hosey and Jefferson

Document Path: l:\council\bills\ms\7391ahb11.docx

Companion/Similar bill(s): 744

Introduced in the House on May 25, 2011

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

Summary: Criminal domestic violence to include offense of Breathing

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

5/25/2011 House Introduced and read first time ([House Journal‑page 7](file:///h:\hj%20archive\2011\05-25-11.docx))

5/25/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 7](file:///h:\hj%20archive\2011\05-25-11.docx))

**VERSIONS OF THIS BILL**

[5/25/2011](file:///p:\pprever\2011-12\4272_20110525.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑3‑605 SO AS TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO IMPEDE THE NORMAL BREATHING OR BLOOD CIRCULATION OF ANOTHER PERSON WITHOUT CONSENT BY INTENTIONALLY APPLYING PRESSURE TO THE OTHER PERSON’S THROAT OR NECK OR OBSTRUCTING THE OTHER PERSON’S NOSE OR MOUTH AND TO PROVIDE PENALTIES; AND TO AMEND SECTION 16‑25‑65, AS AMENDED, RELATING TO CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE, SO AS TO PROVIDE THAT A PERSON WHO VIOLATES SECTION 16‑25‑20 IS GUILTY OF THE OFFENSE OF CRIMINAL DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE WHEN THE PERSON COMMITS A VIOLATION OF SECTION 16‑3‑605.

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

SECTION 1. Article 7, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑605. (A) For purposes of this section:

(1) ‘Deadly weapon’ means an instrument that can be used to inflict deadly force.

(2) ‘Great bodily injury’ means bodily injury that causes a substantial risk of death or that causes serious, permanent disfigurement, or protracted loss or impairment of the function of a bodily member or organ.

(3) ‘Licensed health care professional’ means a duly licensed physician, surgeon, podiatrist, osteopath, osteopathic physician, osteopathic surgeon, physician assistant, nurse, dentist, or pharmacist.

(B) It is unlawful for a person to impede the normal breathing or blood circulation of another person without consent by intentionally:

(1) applying pressure to the other person’s throat or neck; or

(2) obstructing the other person’s nose or mouth.

(C) This section does not apply if a person is:

(1) a licensed health care professional performing a valid medical procedure; or

(2) a law enforcement officer acting within the legal scope of the officer’s duties.

(D) A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned not more than ten years.

(E) A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned not more than twenty years, if the person, while violating this section:

(1) uses or attempts to use a dangerous instrument or deadly weapon;

(2) causes great bodily injury to the other person;

(3) has previously been convicted of a violation of this section or another state’s law substantially similar to this section; or

(4) has previously been convicted of a violent crime as defined in Section 16‑1‑60.”

SECTION 2. Section 16‑25‑65 of the 1976 Code, as last amended by Act 166 of 2005, is further amended to read:

“Section 16‑25‑65. (A) A person who violates Section 16‑25‑20(A) is guilty of the offense of criminal domestic violence of a high and aggravated nature when one of the following occurs. The person commits:

(1) an assault and battery which involves the use of a deadly weapon or results in serious bodily injury to the victim; ~~or~~

(2) an assault, with or without an accompanying battery, which would reasonably cause a person to fear imminent serious bodily injury or death; or

(3) a violation of Section 16‑3‑605.

(B) A person who violates subsection (A) is guilty of a felony and, upon conviction, must be imprisoned not less than a mandatory minimum of one year nor more than ten years. The court may suspend the imposition or execution of all or part of the sentence, except the one‑year mandatory minimum sentence, and place the offender on probation conditioned upon the offender completing, to the satisfaction of the court, a program designed to treat batterers offered through a government agency, nonprofit organization, or private provider approved by the Department of Social Services. The offender must pay a reasonable fee for participation in the treatment program, but no person may be denied treatment due to inability to pay. If the offender suffers from a substance abuse problem, the judge may order, or the batterer treatment program may refer, the offender to supplemental treatment coordinated through the Department of Alcohol and Other Drug Abuse Services with the local alcohol and drug treatment authorities pursuant to Section 61‑12‑20. The offender must pay a reasonable fee for participation in the substance abuse treatment program, but no person may be denied treatment due to inability to pay.

~~(C)~~ ~~The provisions of subsection (A) create a statutory offense of criminal domestic violence of a high and aggravated nature and must not be construed to codify the common law crime of assault and battery of a high and aggravated nature.~~”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent, civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision expressly so provides. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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