**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 20‑4‑35 SO AS TO ALLOW MAGISTRATES TO ISSUE EX PARTE ORDERS OF PROTECTION IN CERTAIN CIRCUMSTANCES; AND TO AMEND SECTIONS 20‑4‑30, 20‑4‑50, AND 20‑4‑90, ALL RELATING TO ORDERS OF PROTECTION, SO AS TO MAKE CONFORMING CHANGES, AND FOR OTHER PURPOSES.

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

SECTION 1. Article 1, Chapter 4, Title 20 of the 1976 Code is amended by adding:

“Section 20‑4‑35. (A) A magistrate may issue an ex parte order of protection without prior notice to the respondent, or counsel for the respondent, or the opportunity to be heard, if the magistrate determines there is probable cause to believe that by reason of abuse there exists an immediate and present danger of bodily injury to a household member in need of protection. A prima facie showing of immediate and present danger of bodily injury, as well as the specific time, place, details of the abuse, and other facts and circumstances upon which the ex parte order is sought, which may be verified by supporting affidavits, constitutes probable cause for purposes of this subsection.

(B) Within one week after issuing an ex parte order, the magistrate must hold a hearing to determine if the petitioner is entitled to an order of protection. A copy of the ex parte order of protection and written notice of the hearing must be served on the respondent in accordance with subsection (C) and must inform the respondent of the right to be heard and the right to retain counsel.

(C) The magistrate must cause a copy of the ex parte order of protection and notice of hearing to be served upon the respondent at least five days prior to the hearing, in the same manner required for service in the circuit courts. Where service is not accomplished five days prior to the hearing, the respondent, upon his motion, is entitled to a continuance until such time as is necessary to provide for compliance with this section. However, the provisions of the ex parte order of protection remain in effect until the hearing can be held.

(D) At the hearing, the magistrate shall determine based on the evidence whether the petitioner has proven the allegation of abuse by a preponderance of the evidence and whether an order of protection continues to be appropriate to protect the petitioner or the abused person or persons on whose behalf the ex parte order of protection was issued. If the magistrate determines that the order of protection is to remain in effect, the magistrate shall issue an order in accordance with Section 20‑4‑60, which shall remain in effect as provided for in Section 20‑4‑70.

(E) Any future proceedings between the parties must be held in family court, except as otherwise allowed pursuant to this chapter.”

SECTION 2. A. Section 20‑4‑30(A) of the 1976 Code is amended to read:

“(A) The family court has jurisdiction over all proceedings under this chapter except that, during nonbusiness hours or at other times when the court is not in session, the petition may be filed with a magistrate. ~~The magistrate may issue an order of protection granting only~~ A magistrate may issue an ex parte order of protection pursuant to Section 20‑4‑35 and has jurisdiction over the initial hearing required following issuance of an ex parte order of protection. An order of protection issued by a magistrate may grant the relief provided by Section 20‑4‑60(a)(1) and (2).”

B. Section 20‑4‑50(a) of the 1976 Code is amended to read:

“(a) Within twenty‑four hours after service of a petition under this chapter upon the respondent, the court ~~may~~ shall, for good cause shown, hold an emergency hearing and issue an order of protection if the petitioner proves the allegation of abuse by a preponderance of the evidence. A prima facie showing of immediate and present danger of bodily injury, which may be verified by supporting affidavits, constitutes good cause for purposes of this section.”

C. Section 20‑4‑90 of the 1976 Code is amended to read:

“Section 20‑4‑90. When any order is issued pursuant to this chapter, upon request of the petitioner, the court may, as part of the order, require the sheriff’s department or the police department pursuant to duties described under Section 20‑4‑100 to accompany the petitioner and assist in placing the petitioner in the possession of the dwelling or residence or otherwise assist in execution of service of the order, or to accompany the respondent to retrieve personal belongings from the dwelling or residence.”

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

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