

2005 LEGISLATIVE WRAP UP

New Law of Interest to Crime Victims & Advocates

UNEMPLOYMENT COMPENSATION FOR JOB LOSS CAUSED BY DOMESTIC VIOLENCE

The General Assembly passed and the Governor signed into law [H.3682](#), a bill that revises Employment Security Law provisions so as to authorize unemployment compensation benefits for individuals who have lost employment as a result of domestic violence. The legislation provides that an employee who has left work voluntarily or has been discharged because of circumstances directly resulting from domestic abuse is eligible for unemployment compensation. Such an employee must: (1) reasonably fear future domestic abuse at or en route to the workplace; (2) need to relocate to avoid future domestic abuse; or (3) reasonably believe that leaving work is necessary for personal safety or safety of the family. To be eligible, the employee must provide documentation of domestic abuse from the police, court records, a shelter worker, attorney, member of the clergy, or medical or other professional. All such documentation or evidence must be kept confidential unless written consent for disclosure is given.

STATUS: Having passed the General Assembly, [H.3682](#) was signed into law by the Governor on May 3, 2005 (Act 50).

CRIMINAL DOMESTIC VIOLENCE

The Senate returned [H.3984](#) (Leach, Haskins, GM Smith) to the House with amendments. The following is a summary of the bill as passed by the House; differences between the House and Senate versions are addressed in the status portion of this summary.

The bill provides comprehensive revisions regarding the handling of domestic violence offenses by the judicial system and law enforcement.

The bill requires magistrates, family court judges, and circuit court judges to receive continuing education on issues concerning domestic violence.

Under the bill, a person seeking an order of protection from domestic violence is not required to pay a filing fee. If a petition for an order of protection is filed and a divorce or separate support and maintenance action is pending or subsequently filed, the bill provides that the court shall proceed with the petition for relief separate from and independent of the action for divorce or separate support and maintenance.

The bill requires a law enforcement officer who is convicted of or pleads guilty or no contest to a criminal domestic violence offense loses certification.

The bill increases penalties for criminal domestic violence offenses.

- Under the bill, a conviction for a misdemeanor criminal domestic violence first offense is punishable by a fine of not less than \$1,000 dollars nor more than \$2,500 dollars or imprisonment not more than 30 days.

- Under the bill, a conviction for a misdemeanor criminal domestic violence second offense (within a period of 10 years) is punishable by a fine of not less than \$2,500 dollars nor more than \$5,000 dollars and imprisonment not less than a mandatory minimum of 30 days nor more than one year. The court may not suspend the mandatory 30 days imprisonment. *For second time offenders, the judge may order that the mandatory 30-day sentence may be served two days during the week or on weekends as well as allows the offender to be eligible for good time credits and early release.* The second offense is triable in Circuit Court, eligible for transfer court
- Under the bill, a conviction for a third or subsequent criminal domestic violence offense (within a period of 10 years) is a felony offense punishable by imprisonment for not less than a mandatory minimum of one year but not more than five years. The court may not suspend the mandatory one-year imprisonment.
- Under the bill, a conviction for criminal domestic violence of a high and aggravated nature is punishable by imprisonment for not less than a mandatory minimum of one year nor more than 10 years. The court may not suspend the mandatory one-year imprisonment.
- Certified copies of an order of protection must be forwarded by law enforcement within 24 hours to NCIC.

In order to participate in a pretrial intervention program, if the offense is first offense criminal domestic violence, the person must agree in writing to successful completion of a batter's treatment program approved by the Department of Social Services.

The bill requires that an individualized hearing must be held for criminal domestic violence offenses triable in magistrates or municipal court and that the victim of the offense must receive notice of the hearing.

Under the bill, a first offense criminal domestic violence charge may be expunged five years from the date of the offense.

Under this bill, an officer who affects an arrest for criminal domestic violence, by use of a uniform traffic ticket shall complete and file an incident report immediately following the issuance of the uniform traffic ticket.

The bill establishes a committee composed of five members of the Senate, five members of the House, to study the criminal domestic laws of the State and recommend appropriate changes to the General Assembly by February 15, 2006.

STATUS: ***H.3984** passed the House, and the Senate returned the bill to the House with amendments on May 26, 2005. H. 3984 passed the Senate, concurred on in the House June 1, Signed into law by the Governor June 7, 2005. The new law becomes effective January 1, 2006.*

“MARY LYNN’S LAW” (DIVERSIONARY PROGRAMS, VICTIM NOTIFICATION, VICTIM IMPACT STATEMENTS, STALKING AND HARASSMENT, AND RESTRAINING ORDERS)

Diversionsary Programs

Among other things, [H.3543](#) (GM Smith, Weeks) limits defendant participation in diversionary programs such as mental health court and drug court. The bill provides that (1) a person with a current charge or a prior conviction for a violent offense or a harassment or stalking offense, or (2) a person subject to a restraining order or valid order of protection, or (3) a person currently on parole or probation for any offense, or (5) if the consent of the victim has not been obtained, then that person may not be considered for a diversion program. These provisions do not apply to a program administered by the South Carolina Prosecution Coordination Commission or by a circuit solicitor.

[H.3543](#) creates a task force to examine and design statewide standards for the operation of mental health courts.

Victim Notification

The bill makes numerous revisions with regards to victim notification.

- Diversionsary programs, except a diversionary program administered by the South Carolina Prosecution Coordination Commission or a circuit solicitor, must make reasonable attempts to notify the victim of a crime prior to the defendant's release from the program, unless the defendant is released to a law enforcement agency.
- In every case where there is a court-ordered or mandatory mental evaluation, which takes place in an inpatient facility, the organization or facility responsible for the evaluation must make reasonable attempts to notify the victim of the crime prior to the defendant's release from the facility, unless the defendant is released to a law enforcement agency.
- Notification of a victim may not be only by electronic or other automated communication or recording. However, after three unsuccessful attempts to reach a victim by electronic or automated communication or recording, the appropriate agency or division shall attempt to make personal contact with the victim.
- A department or agency having custody of a person accused, convicted, or adjudicated guilty of committing a crime involving a victim, must inform each victim, upon request, before any transfer of the person to a less secure facility or to a diversionary program. These provisions do not apply to transfers to other law enforcement agencies and transfers to other non-law enforcement locations if the person remains under security supervision. All victims, upon request, must be notified of interdepartmental transfers after the transfer occurs. Notification to a victim may not be only by electronic or other automated communication or recording, except in the case of interdepartmental transfers.

- A law enforcement agency, upon effecting the arrest or detention of a person accused of committing an offense involving a victim, must also provide to a mental health facility the appropriate contact information for each victim.

Victim Impact Statements

The bill makes changes with regards to victim impact statements. The bill requires that in cases in which the sentence is more than 90 days, the prosecuting agency must forward as appropriate and within 15 days, a copy of the victim's impact statement. The bill requires the prosecuting agency to maintain the victim's original impact statement. The victim impact statement must not be provided to the defendant until the defendant has been adjudicated, found guilty or has pled guilty. The victim's impact statement and its contents are not admissible as evidence in any trial.

Stalking and Harassment

The bill makes substantive changes with regards to the criminal offenses of stalking and harassment. **H.3543** creates the offenses of harassment in the first degree, harassment in the second degree, as well as redefines the offense of stalking. Penalties are outlined for violations. There are exceptions for licensed private investigators and electronic mail service providers. The bill authorizes a law enforcement officer or another person with knowledge of the circumstances to sign a warrant in place of the victim for a person alleged to have committed a harassment or stalking offense.

Prior to setting bail, a magistrate or municipal judge may order a defendant charged with harassment in the first or second degree or stalking to undergo a mental health evaluation. The purpose of this evaluation is to determine if the defendant needs mental health treatment or counseling as a condition of bond. The evaluation must be scheduled within 10 days of the order's issuance. Once the evaluation is complete, the examiner must, within 48 hours, issue a report to the local solicitor's office, summary court judge, or other law enforcement agency. Upon receipt of the report, a bond hearing must be arranged before a circuit court judge or the summary court judge. **H.3543** requires at a bond hearing that the court shall have, if available, all incident reports generated as a result of the offense charged and a copy of the defendant's criminal record.

Before sentencing a person convicted of stalking or harassment in the first or second degree, the court may require the person to undergo a mental health evaluation. The evaluation may not take place until the facility conducting the evaluation has received all of the necessary documentation. If the evaluation results in the unsupervised release of the person, the victim must be notified prior to the person's release. All reasonable efforts must be made to notify the victim personally. Under this bill, a person convicted of a violent offense, harassment or stalking offense or a burglary offense is not eligible for work release.

Restraining Orders

H.3543 authorizes magistrate's court to assess a filing fee against the nonprevailing party in an action for a restraining order. The court may hold a person in contempt of court for

failure to pay this filing fee. A restraining order remains in effect for a fixed period of time for not less than one year, as determined by the court on a case-by-case basis. A restraining order issued by a court must not contain the social security number of a party to the order and must contain as little identifying information as necessary of the party it seeks to protect.

STATUS: Having been approved by the General Assembly, H.3543 (R135) was ratified on May 26, 2005.

"AUTUMN'S LAW" (CRIMINAL SEXUAL CONDUCT/ TERMINATION OF PARENTAL RIGHTS)

The House and Senate have passed different versions of "Autumn's Law." The Senate passed [S.227 \(Fair, Campsen, Leventis\)](#), and the House passed [H.3222 Leach](#). Listed below is a summary of [H.3222](#) as it passed the House. Differences between the Senate and House legislation are discussed in the status portion of the summary.

[H.3222](#) pertains to the adoption and termination of parental rights when the child is conceived as a result of criminal sexual conduct or incest. Under the bill, consent or relinquishment for adoption is not required when the biological parent of a child conceived as a result of that parent's criminal sexual conduct or incest as found by a court of competent jurisdiction unless, with respect to a conviction for criminal sexual conduct, the sentencing court made a specific finding on the record that the conviction resulted from consensual sexual conduct where the victim was younger than the actor. If a person is convicted or pleads guilty or no contest to a criminal sexual conduct with a minor offense or a similar offense under laws of another jurisdiction, that person's parental rights to any child conceived as a result of the conduct underlying the conviction or pleas are automatically terminated upon conviction or entry of a plea unless the sentencing court made a specific finding on the record that the conviction resulted from consensual sexual conduct where the victim was younger than the actor. If the biological parent's conviction is reversed on appeal, the bill outlines a procedure for the biological parent to petition the court to restore his or her parental rights.

STATUS: [H.3222](#) passed the House and was referred to the Senate Judiciary Committee on April 28, 2005. NOTE: Similar legislation, [S.227](#) passed the Senate; the House returned [S.227](#) to the Senate with amendments on May 25, 2005. Senate amended, returned to the House. House concurred with the Senate amendments.

Differences between the House and Senate versions include the following: The Senate version provides that consent or relinquishment for adoption is not required from a biological parent of a child conceived as a result of that parent's criminal sexual conduct or incest, as found by a court of competent jurisdiction. The Senate version also provides that a ground for termination of parental rights is that a child was conceived as a result of criminal sexual conduct as found by a court of competent jurisdiction; specifically, it is grounds for terminating the rights of that biological parent. The House version has provisions in it relating to instances where the criminal sexual conduct was consensual and the victim was younger than the actor. The House version has automatic provisions for termination of parental rights when a person is convicted of certain offenses.

STATUS: *The Senate version prevailed. The Governor signed S 227 into law June, 07, 2005.*

EMERGENCY ADMISSIONS TO MENTAL HEALTH FACILITIES

- **H 3412 (Harrison, Bales, Cotty)** TO AMEND SECTION 44-17-410, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO EMERGENCY ADMISSIONS TO MENTAL HEALTH FACILITIES, SO AS TO PROVIDE THAT IF A PATIENT DOES NOT REQUIRE INVOLUNTARY TREATMENT, THE COURT, UPON PROPER NOTICE, SHALL DISMISS THE PETITION FOR COMMITMENT; TO AMEND SECTION 44-17-430, RELATING TO TAKING PERSONS WHO ARE BELIEVED TO BE A DANGER TO THEMSELVES OR OTHERS INTO CUSTODY, SO AS TO PROVIDE THAT AN ORDER AUTHORIZING SUCH CUSTODY IS VALID ONLY FOR SEVENTY-TWO HOURS; TO ADD SECTION 44-13-05 SO AS TO ESTABLISH PROCEDURES FOR A LAW ENFORCEMENT OFFICER TO TAKE A PERSON WHO THE OFFICER BELIEVES TO BE MENTALLY ILL INTO PROTECTIVE CUSTODY AND TO PROVIDE IMMUNITY FROM LIABILITY; TO AMEND SECTION 44-17-580, RELATING TO PROCEDURES FOR JUDICIAL COMMITMENT TO A MENTAL HEALTH FACILITY, SO AS TO CLARIFY THESE PROCEDURES AND TO AUTHORIZE THE COURT TO ORDER OUT-PATIENT TREATMENT FOLLOWING IN-PATIENT COMMITMENT; TO AMEND SECTION 44-24-150, RELATING TO THE AUTHORITY OF THE FAMILY COURT TO COMMIT CERTAIN CHILDREN FOR PSYCHIATRIC EVALUATION, SO AS TO PROVIDE THAT THE COURT MAY ORDER THAT SUCH AN EVALUATION BE CONDUCTED BY A COMMUNITY MENTAL HEALTH CENTER AND THAT IF AN IN-PATIENT EVALUATION IS RECOMMENDED, THE COURT MAY COMMIT THE CHILD TO A DESIGNATED HOSPITAL FOR UP TO FIFTEEN DAYS FOR SUCH AN EVALUATION; AND TO AMEND SECTION 44-52-50, RELATING TO PROCEDURES FOR EMERGENCY ADMISSIONS FOR ALCOHOL AND DRUG TREATMENT, SO AS TO CLARIFY THAT IF A COURT ISSUES AN ORDER TO TAKE A PERSON IN NEED OF SUCH TREATMENT INTO PROTECTIVE CUSTODY, THE ORDER IS VALID ONLY FOR SEVENTY-TWO HOURS.

Victim Issues:

- The law allows a law enforcement officer to take a person into protective custody and transport that person to a local mental health facility if a criminal offense carries a penalty of less than one year and does not involve a victim who could seek a warrant for the person's arrest.
- In psychiatric evaluations of children ordered by the family court, victims must be notified of a child's transfer to or discharge from a mental health facility.

STATUS: Signed into law by the Governor June, 3, 2005.

FIRST DEGREE CRIMINAL SEXUAL CONDUCT EXPANDED / 1 STRIKE PEDOPHILE LAW

S.47 (Cromer, Elliot, Fair) H. 3033 (Huggins) An actor engaging in sexual battery with a victim less than 16 that has been previously convicted, adjudicated delinquent for a sex act against a child or has been ordered to register on the sex offender registry must be punished by a mandatory ten year minimum nor more than 30 years.

STATUS: S. 47 Signed into law by the Governor June 1, 2005.

DSS CENTRAL REGISTRY

S.85 (McConnell, Moore, Elliot) provides for the court to order a person's name on the DSS Central Registry if there is a finding by the preponderance of evidence that the person physically or sexually abused or willfully or recklessly neglected a child and that the placement on the registry cannot be waived by any party or the court.

The law also adds that DSS, when making a determination of a person's or applicant's history by screening against the Central Registry before employment or service in a volunteer role, the person must be screened each time the license, registration, or other approval is renewed.

STATUS: Having been passed by the General Assembly, S. 85 was signed by the Governor into law May 26, 2005.

SEX OFFENDER REGISTRY REVISITED

H. 3328 (Brady, Ceips, Cobb-Hunter) The new revised sex offender registry contains language that reflects best practices of the law enforcement community plus significant changes.

Law Enforcement / Offender Requirements

- SLED shall include and cross-reference alias names
- The registry shall include foreign convictions and not guilty by reason of insanity offenders once the person is found to be no longer insane
- Adds the crime of using a controlled substance to commit a CSC to the registry
- Allows a person found not guilty to petition a court for removal of their name from the registry
- Changes the requirement for registry by offenders being released from departments to one business day
- Mandates a photo to be provided before release from departments.
- Those offenders required to register with a Sheriff have been expanded to include an offender who resides, owns property, or attends any public or private school in any county.
- The Sheriff shall then shall notify all local law enforcement agencies, including college or university law enforcement agencies within 5 business days of the offender who resides, owns property, or attends any public or private school within the local law enforcement agency's jurisdiction
- It is the duty of the offender to contact (may be multiple counties) a sheriff to register notification of change of address, or notification of change in attendance, enrollment, employment, or vocation status at any public or private

school. Failure to comply or to provide accurate information results in the same penalties as in current law.

Realtors

- Realtors are immune from liability for any act or omission related to disclosure, if the realtor in a timely manner provides to its clients and customers written notice that they may obtain information about the sex offender registry from the county sheriff.

GPS System (Knotts, Ford)

- The bill includes an unfunded wish to place pedophiles on electronic monitoring. The Department of Probation, Parole and Pardon Services is given the authority, if funded, to place such an offender on these devices if they are released from prison, placed on parole, community supervision or are sentenced to probation
- The system must produce reports, records of the offender's presence near or within a crime scene or prohibited area or the offender's departure from a specific geographic location
- Offenders failing to comply with terms or tampering with the device are guilty of a Felony, fined not more than \$5,000 or imprisoned for not more than 5 years
- A person who knowingly protects, harbors, or conceals an offender not in compliance with the requirements in this article is guilty of a felony, fined not more than \$5,000 or imprisoned for not more than 5 years