

Impact of 2015 Act No. ____ (S3): Summary of Each S.C. Code Section Impacted by Act

Act Signed by Governor June X, 2015 (*Effective Date: June X, 2015*)

WHAT DOES	OVERVIEW	SPECIFICS
DOMESTIC VIOLENCE CRIMES		
Amends §16-25-10 (<i>definitions</i>)	Adds new definitions	Defines terms used in created new DV offenses: deadly weapon, great bodily injury (GBI), moderate bodily injury (MBI), prior conviction of domestic violence, protection order, and firearm
Amends §16-25-20 (<i>DV crimes</i>)	<ul style="list-style-type: none"> • Totally rewrites offense of CDV – renames “domestic violence” and creates three degrees of the offense; • Makes all lower degrees of DV lesser-included offenses of the greater degree(s) and of DVHAN (16-25-20 (B)(C) and (D)); • Makes sentences for all degrees suspend-able with specific requirements for probation (16-25-20 (E)); • Provides requirements for domestic violence intervention programs (16-25-20(G)); • Creates crime for violating conditions of protection order (16-25-20(H)); and • Defendant is to appear in court or be tried in absence unless charge dismissed prior to court date (16-25-20(I)). 	<p>Creates new crime of DV, with 3 degrees. Base requirement for ALL degrees of DV is physical harm/injury to household member or the offer/attempt to cause such with apparent present ability under circumstances reasonably creating fear of imminent peril. (§16-25-20(A))</p> <p>To establish each of the new 3 degrees of DV need, must also establish:</p> <p>1st Degree DV (felony: 0-10 years) (§16-25-20(B)): either</p> <ol style="list-style-type: none"> 1. GBI resulted or act accomplished by means likely to result in such; or 2. defendant violated protection order and in process of such commits 2nd degree DV; or 3. defendant has 2 or more prior convictions of DV within 10 years of current offense; or 4. defendant used firearm in any manner while causing or attempting/offering to cause physical harm/injury; or 5. defendant committed 2nd degree DV against pregnant victim; in presence of minor; during commission of a robbery, burglary, kidnapping, or theft; offense committed by impeding victim’s breathing or airflow; or offense committed using physical force or threatened us of force to block access to phone/communication device for purpose of preventing/obstructing/interfering with report of any crime/bodily injury/property damage to a LEA or request for ambulance/emergency medical assistance from a LEA/emergency medical provider. <p>2nd Degree DV (misdemeanor: 0-3 years &/or \$2,500-5,000) (§16-25-20(C)):</p> <ol style="list-style-type: none"> 1. MBI resulted or act accomplished by means likely to result in such; or 2. defendant violated protection order and in process of such commits 3rd degree DV; or 3. defendant has 1 prior conviction of DV within 10 years of current offense; or 4. defendant committed 3rd degree DV against pregnant victim; in presence of minor; during commission of a robbery, burglary, kidnapping, or theft; offense committed by impeding victim’s breathing or airflow; offense committed using physical force or threatened us of force to block access to phone/communication device for purpose of preventing/obstructing/interfering with report of any crime/bodily injury/property damage to a LEA or request for ambulance/emergency medical assistance from a LEA/emergency medical provider. <p>3rd Degree DV (misdemeanor: 0-90 days &/or \$1,000 – 2,500) (§16-25-20(D)):</p> <ul style="list-style-type: none"> • No additional elements – all need show is base requirement set forth above. <p>Sentences for all degrees may be suspended with specific requirements for probation (16-25-20 (E)), and provides for factors to be considered by court in determining whether to suspend any part of a sentence. (16-25-20 (F))</p> <p>Creates crime for violating conditions of protection order issued in SC or another state (misdemeanor: 0-30 days and 0-\$500) (§16-25-20(H))</p>
Amends §16-25-30 (<i>firearm possession</i>)	Totally rewrote statute dealing with possession of firearm by person convicted of DV	<p>Unlawful for person to ship, transport, receive or possess firearm or ammunition if:</p> <ul style="list-style-type: none"> • convicted of DVHAN or 1st Degree DV or equivalent in another state (§16-25-30(A)(1)) (felony: 0-5 years and/or \$0-2,500); or • convicted of 2nd Degree DV or equivalent in another state, and trial court made specific findings and concluded defendant caused MBI (§16-25-30(A)(2)) (misdemeanor: 0-3 years and/or \$0-1,000); or • convicted of 2nd or 3rd Degree DV and trial court at sentencing ordered could not ship, transport, receive or possess firearm or ammunition (§16-25-30(A)(3)) (misdemeanor: 0-3 years and/or \$0-1,000); or • convicted of DV in another state containing the elements of 2nd or 3rd Degree DV and trial court at sentencing ordered could not ship, transport, receive or possess firearm or ammunition (§16-25-30(A)(3)) (misdemeanor: 0-3 years and/or \$0-1,000); or • if subject to valid protection order issued by family court or court of another state, which made specific findings of physical harm, BI, assault or that person offered/attempted to cause physical harm/injury to household member with present ability under circumstances

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<p>Amends §16-25-65 (<i>DV crime</i>)</p>	<ul style="list-style-type: none"> • Changes CDVHAN to DVHAN, totally rewrites elements of crime; and changes punishment. 	<p>To establish DVHAN, must show Defendant violated 16-25-20 (A) (physical harm/injury to household member or the offer/attempt to cause such with apparent present ability under circumstances reasonably creating fear of imminent peril), and one of the following occurs:</p> <ol style="list-style-type: none"> 1. offense committed under circumstances manifesting extreme indifference to value of human life and GBI results; or 2. offense committed, <i>with or without</i> accompanying battery, and under circumstances manifesting extreme indifference to value of human life and would reasonably cause person to fear GBI or death; or 3. defendant violates protection order and, in process, commits 1st degree DV. <p>(§16-25-65(A)(1) – (3))</p> <p>Provides that “circumstances manifesting extreme indifference to value of human life” include, but are not limited to: use of deadly weapon; DV against pregnant victim; in presence of minor; during commission of a robbery, burglary, kidnapping, or theft; offense committed by impeding victim’s normal breathing or blood circulation by applying pressure to throat/neck or obstructing nose/mouth causing stupor/loss of consciousness for any period of time; and offense committed using physical force or threatened us of force to block access to phone/communication device for purpose of preventing/obstructing/interfering with report of any crime/bodily injury/property damage to a LEA or request for ambulance/emergency medical assistance from a LEA/emergency medical provider. (§16-25-65(D))</p> <p>DVHAN is felony, punishable by 0-20 years.(§16-25-65(B))</p>
OTHER		
<p>Amends §16-1-60</p>	<p>Violent crimes listing</p>	<p>Changes reference to CDVHAN to DVHAN and adds 1st Degree DV</p>
<p>Amends §17-25-45 (C) (2)</p>	<p>Serious offenses listing</p>	<p>Adds DVHAN and 1st Degree DV to list of “serious offenses”</p>
<p>Amends §56-7-10 (A)</p>	<p>Use of traffic tickets to charge DV offenses</p>	<p>Changes references to DV crimes in list of offenses for which traffic tickets may be written to include 2nd and 3rd degree DV</p>
<p>Amends §16-3-600 (A)(2) (<i>MBI definition for A&B</i>)</p>	<p>Changes definition of “moderate bodily injury” for assault and battery crimes to conform to new definition included in DV crimes</p>	<p>Changes definition of MBI to mean physical injury involving prolonged loss of consciousness, or causing temporary or moderate disfigurement or temporary loss of the function of a bodily member or organ, or injury that requires medical treatment when the treatment requires the use of regional or general anesthesia or injury that results in a fracture or dislocation. MBI not include one-time treatment and subsequent observation of scratches, cuts, abrasions, bruises, burns, splinters, or any other minor injuries that do not ordinarily require extensive medical care.</p>
<p>Amends §17-15-30 (<i>Bond</i>)</p>	<ul style="list-style-type: none"> • Adds “individual” to “danger to community” 	<p>Adds “individual” after “danger to community” to clarify danger to victim is to be bond consideration. (§17-15-10(A))</p>
<p>Amends §17-15-30 (<i>Bond</i>)</p>	<ul style="list-style-type: none"> • Adds “individual” to “danger to community;” 	<p>Adds “individual” after “danger to community” to clarify danger to victim is to be bond consideration. (§17-15-30(A))</p>

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	and • changes timing of and requirements for bond hearings on DV charges	Provides that a bond hearing on a violation of Chapter 25, Title 16 must occur within 24 hours after arrest and may not proceed without the defendant’s criminal record and incident report/presence of arresting officer. (§17-15-30(C)(2))
Amends §22-5-510 (Bond)	• Adds “individual” to “danger to community;” and • changes timing of and requirements for bond hearings on DV charges	Adds “individual” after “danger to community” to clarify danger to victim is to be bond consideration. (§22-5-510(C)) Provides that a bond hearing on a violation of Chapter 25, Title 16 must occur within 24 hours after arrest and may not proceed without the defendant’s criminal record and incident report/presence of arresting officer. (§22-5-510(F))
Amends §16-25-120 (A) and (B) (Bond)	• makes consideration of factors listed in section (B) mandatory	“May” changed to “must” in both sections (A) and (B) to make consideration of factors listed in section (B) mandatory for courts setting bond in cases involving a violent offense as defined in 16-1-60, when the victim is a household member, and the defendant, at the time of the offense for which bond being set, was either subject to a protection or restraining order or had been convicted of violating a protection or restraining order. <i>NOTE: offense does not have to be charged as a DV crime.</i>
Amends §17-15-50 (Bond)	Addresses jurisdiction	Clarifies that court with jurisdiction of offense is court that may change conditions of bond.
Amends §17-15-55 (Bond)	Addresses concurrent jurisdiction	Summary court has concurrent jurisdiction with the circuit court for ten days from the date bond is first set on a charge by the summary court to determine if bond should be revoked. [subsection number TBD]
Amends §16-25-70 (A) and (B) (Warrantless arrests & reports)	• Requires documentation of investigations; and • Changes obligation to make arrest	Requires that an incident report must be prepared if a LEA arrests someone for a DV offense. (§16-25-70(A)) Amends §16-25-70(B) to make arrest discretionary if an officer sees physical manifestations of injury, and provide that an arrest may not be made if an officer determines that PC does not exist.
Amends §16-3-1110 (8) (Victims comp.)	• Changes definition of “victim”	Definition of “victim” changed to include minors who witness DV offense.
Amends §17-22-90 (7) (PTI)	• Changes agency with approval authority	Changes the agency responsible for approving batterer’s programs for those changed with DV under Section 16-25-20 from DSS to the Solicitor.
Adds Article 3 to Chapter 25, Title 16 (DV Advisory Committee)	• Creates §§16-25-310 – 360 establishing a DV Advisory Committee	§16-25-310: definitions. §16-25-320: composition and operation of Committee. §16-25-330: purpose and duties of Committee (includes annual survey and analysis of DV incidents, training and technical assistance, recommendation of legislative changes, public education, annual report to Governor and General Assembly; and review of cases selected by AG/Solicitor). §16-25-340: Access to information by Committee. §16-25-350: Application of FOIA to Committee meetings and information; misdemeanor if violated (0-6 months and/or \$0-500). §16-25-360: What information/product is/is not considered public record for FOIA and not obtainable through subpoena/testimony; misdemeanor if violated (0-6 months and/or \$0-500).
Adds Article 5 to Chapter 25, Title 16 (DV Community Coordinating Councils)	• Creates §§16-25-510 – 550 establishing DV Community Coordinating Councils	§16-25-510: Each Solicitor <i>shall</i> facilitate development of council in each county or judicial circuit based on public-private sector collaboration. §16-25-520: Purpose of councils. §16-25-530: Duties and responsibilities of councils. §16-25-540: Membership of councils. §16-25-550: Each council responsible for generating revenue for operation and administration.
Amends §59-32-30(A)(2) (DV education in schools)	• DV to be addressed in programs for grades 6-8	Beginning with 2016-2017 school year, DV must be included in the comprehensive health education programs for grades 6 – 8.
Repeals §43-1-260 (DV Community Coordinating Councils)	• Repealed statute	Provision included in new Article 5, Chapter 25, Title 16.
Adds Article 18 to Chapter 3, Title 16 (Permanent restraining orders)	• Creates §§16-3-1900 – 1920 addressing restraining orders	§16-3-1900: Sets forth definitions for article. §16-3-1910: Permanent restraining orders (PROs) • Circuit court and family court have jurisdiction (§16-3-1910 (A)); • Steps for seeking (§16-3-1910(B)): o Request at time respondent is convicted of crime against

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		<p>complainant; <i>or</i></p> <ul style="list-style-type: none"> o File summons and complaint in common pleas court in county in which either respondent resides, crime occurred, or, if respondent is nonresident or cannot be located, complainant resides. • Persons who may apply for PRO: victim of SC crime, competent adult who resides in SC on behalf of minor who is victim of SC crime, or prosecution witness. (§16-3-1910(C)). • Contents and requirements for complaint, court to provide forms, no filing fee, and service of pleadings. (§16-3-1910(D), (F), and (G)); • Complaining must provide address to court and LEAs; to be kept under seal and not subject to disclosure under FOIA. (§16-3-1910(E)) • Hearing, default judgment, and issuance, terms, and language of PRO. (§16-3-1910 (H) – (L)) • Duration and lifting of PRO. (§16-3-1910(M)) • PRO enforceable throughout SC. (§16-3-1910(N)) • Police <i>shall</i> arrest respondent, having notice of PRO, who violates PRO; classification of violation depends on underlying conviction: <ul style="list-style-type: none"> o If conviction providing basis for PRO was felony, violation of PRO is felony (0-5 years); and o If conviction providing basis for PRO was misdemeanor, violation of PRO is misdemeanor (0-3 years and/or \$0-2,000). (§16-3-1910(O)) • PROs are protection orders for purposes of §20-4-320 (provided other criteria of Article 3, chapter 4, Title 20 are met), <i>but not</i> for purposes of §16-25-30. (§16-3-1910(P)) • Remedies provided are in addition to any other provided by law. (§16-3-1910(Q)) <p>§16-3-1920: Emergency Restraining Orders (EROs)</p> <ul style="list-style-type: none"> • Magistrate court has jurisdiction (§16-3-1920 (A)); <ul style="list-style-type: none"> o Action may be filed in county in which either respondent resides, crime occurred, or, if respondent is nonresident or cannot be located, complainant resides. (§16-3-1920(B)) • Persons who may apply for ERO: victim of SC crime, competent adult who resides in SC on behalf of minor who is victim of SC crime, or prosecution witness. (§16-3-1920(C)). • Contents and requirements for complaint, court to provide forms, no filing fee, and service of pleadings. (§16-3-1920(D) and (F)) • Complaining must provide address to court and LEAs; to be kept under seal and not subject to disclosure under FOIA. (§16-3-1920(E)) • Timing and form of hearing, and grounds upon which ERO may be issued. (§16-3-1920 (G)) • When judge may hold emergency hearing and issue ERO without notice to respondent. (§16-3-1920 (H)) • Contents and terms of ERO. (§16-3-1920 (I) and (J)) • Court shall serve ERO on respondent. (§16-3-1920 (K)) • Duration and modification of ERO. (§16-3-1920(L)) • ERO enforceable throughout SC. (§16-3-1920(M)) • Police <i>shall</i> arrest respondent, having notice of ERO, who violates PRO; classification of violation depends on underlying conviction; arrest warrant not required. (§16-3-1920(N)) <ul style="list-style-type: none"> o If conviction providing basis for ERO was felony, violation of ERO is felony (0-5 years); and o If conviction providing basis for ERO was misdemeanor, violation of ERO is misdemeanor (0-3 years and/or \$0-2,000). • EROs are protection orders for purposes of §20-4-320 (provided other criteria of Article 3, chapter 4, Title 20 are met), <i>but not</i> for purposes of §16-25-30. (§16-3-1920(O)) • Remedies provided are in addition to any other provided by law. (§16-3-1920(P))
<p>Amends §22-5-910 (Expungement)</p>	<ul style="list-style-type: none"> • Makes only first offense 3rd degree DV eligible for expungement 	<p>Only a first offense conviction for 3rd degree DV is eligible for expungement after 5 years (if no other conviction during 5-year period). (§22-5-910 (B))</p>
<p>Savings Clause (Section 26 of Act)</p>	<p>Violations of repealed or amended statutes (such as the old CDV crimes) are to be charged under the old statutes and the punishments provided therein are to control. ONLY acts occurring on and after the effective date of the Act are to be charged/prosecuted under, sentenced under, and/or controlled by the new statutes (crimes) created by and other changes made by this Act.</p>	
<p>Severability Clause (Section 27 of Act)</p>	<p>If any section/subsection/paragraph/subparagraph/sentence/clause/phrase/word of Act is held to be unconstitutional/invalid, Act provides such shall not affect constitutionality/validity of remaining portions.</p>	

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