

**South Carolina General Assembly**  
124th Session, 2021-2022

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**Bill 3620**

~~Indicates Matter Stricken~~

Indicates New Matter

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(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

AMENDED

April 7, 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, Wetmore, Weeks, Matthews, Rivers, Anderson, Jefferson, Garvin, Hosey and Clyburn

S. Printed 4/7/21--H. [SEC 4/8/21 2:27 PM]

Read the first time January 12, 2021.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Amended by House Judiciary on March 17, 2021**

**State Expenditure**

This bill creates the "Clementa C. Pinckney Hate Crimes Act," which requires an enhanced penalty for specific crimes committed against a victim who was intentionally selected (in whole or in part) by an offender because of the offender's belief or perception regarding the victim's race, color, sex, gender, national origin, sexual orientation, or physical or mental disability, regardless of whether the offender's belief or perception is correct. Offenses to which the enhanced penalty may be applied include violent crimes (Classes A through F felonies, and Classes A through C misdemeanors) and assault by mob in the second degree. The enhanced penalty will be added to the penalty for the underlying offense and will consist of an additional fine of not more than \$10,000 and an additional term of imprisonment of up to five years.

The prosecuting agency and the defense may present evidence relevant to the determination of whether the defendant intentionally selected the person against whom the offense was committed. The court with competent jurisdiction over the underlying offense shall instruct the trier of fact to find a special verdict as to whether the defendant intentionally selected the victim, and the trier of fact must determine beyond a reasonable doubt that the offense was indeed a hate crime. The enhanced penalty does not apply unless the defendant was indicted (either separately or as a separate count in the indictment for the underlying offense) for the hate crime and he was found guilty of the underlying offense. According to the United States Department of Justice, there were 68 hate crime incidents reported in South Carolina in 2019.

**Judicial Department.** We anticipate this bill will have no expenditure impact on the general fund, other funds, or federal funds, as its purpose is to enhance the penalties for the offenders convicted of existing offenses.

**Department of Corrections.** This bill provides penalty enhancements for specific crimes committed against a person when those crimes are motivated by the offender's discriminatory beliefs or perceptions. We anticipate this bill may increase the length of imprisonment for offenders who qualify for the enhanced penalty by up to five years, thereby increasing the expenditures of the Department of Corrections. However, due to the variability in the number of such offenses that might occur in a given year, the expenditure impact on the agency's general fund, other funds, or federal funds of the Department of Corrections cannot be determined.

## State Revenue

This bill has the potential to increase general fund revenue from fines, as well as other funds revenue of the Judicial Department and any other applicable agency who would otherwise receive a distribution from fine revenue for such an offense, due to the increased fine for offenders who qualify for the enhanced penalty. However, due to the variability in the number of such offenses that might occur in a given year, the revenue impact cannot be determined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

## 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.

Amend Title To Conform

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

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.

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