**A** **BILL**

TO AMEND SECTION 23-3-430 OF THE SOUTH CAROLINA CODE OF LAWS, 1976, RELATING TO THE SEX OFFENDER REGISTRY, TO ESTABLISH A TIER SYSTEM FOR OFFENSES THAT REQUIRES AN OFFENDER TO REGISTER AS A SEX OFFENDER; TO AMEND ARTICLE 7, CHAPTER 3, TITLE 23 TO ADD SECTION 23-3-463 TO ESTABLISH THAT AN OFFENDER WHO IS REQUIRED TO REGISTER, MAY, AFTER A SPECIFIED PERIOD OF TIME BASED ON THE TIER OF HIS OFFENSE, PETITION THE CIRCUIT COURT FOR REMOVAL OF THE REQUIREMENTS OF THE SEX OFFENDER REGISTRY UPON MEETING CERTAIN REQUIREMENTS; TO AMEND SECTION 23-3-490 TO CLARIFY THE PROVISIONS FOR PUBLIC AND ELECTRONIC DISSEMINATION OF SEX OFFENDER INFORMATION; AND TO AMEND SECTION 23-3-460 TO MAKE FURTHER CONFORMING CHANGES.

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

SECTION 1. Section 23-3-430 of the 1976 Code is amended to read:

“Section 23‑3‑430. (A) Any person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense described below, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in any comparable court in the United States, or a foreign country, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere, or found not guilty by reason of insanity to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article. A person who has been found not guilty by reason of insanity shall not be required to register pursuant to the provisions of this article unless and until the person is declared to no longer be insane or is ordered to register by the trial judge. A person who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in any court in a foreign country may raise as a defense to a prosecution for failure to register that the offense in the foreign country was not equivalent to any offense in this State for which he would be required to register and may raise as a defense that the conviction, adjudication, plea, or finding in the foreign country was based on a proceeding or trial in which the person was not afforded the due process of law as guaranteed by the Constitution of the United States and this State.

(B) For purposes of this article, a person who remains in this State for a total of thirty days during a twelve‑month period is a resident of this State.

(C)(1) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as ~~an~~ a Tier I offender:

~~(1)~~ ~~criminal sexual conduct in the first degree (Section 16‑3‑652);~~

~~(2)~~ ~~criminal sexual conduct in the second degree (Section 16‑3‑653);~~

~~(3)~~ ~~criminal sexual conduct in the third degree (Section 16‑3‑654);~~

~~(4)~~ ~~criminal sexual conduct with minors, first degree (Section 16‑3‑655(A));~~

~~(5)~~ ~~criminal sexual conduct with minors, second degree (Section 16‑3‑655(B)). If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16‑3‑655(B)(2) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article;~~

~~(6)~~ ~~criminal sexual conduct with minors, third degree (Section 16‑3‑655(C));~~

~~(7)~~ ~~engaging a child for sexual performance (Section 16‑3‑810);~~

~~(8)~~ ~~producing, directing, or promoting sexual performance by a child (Section 16‑3‑820);~~

~~(9)~~ ~~criminal sexual conduct: assaults with intent to commit (Section 16‑3‑656);~~

~~(10)~~ ~~incest (Section 16‑15‑20);~~

~~(11)~~ ~~buggery (Section 16‑15‑120);~~

~~(12)~~ ~~peeping, voyeurism, or aggravated voyeurism (Section 16‑17‑470);~~

~~(13)~~ ~~violations of Article 3, Chapter 15, Title 16 involving a minor;~~

~~(14)~~ ~~a person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender;~~

~~(15)~~ ~~kidnapping (Section 16‑3‑910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;~~

~~(16)~~ ~~kidnapping (Section 16‑3‑910) of a person under eighteen years of age except when the offense is committed by a parent;~~

~~(17)~~ ~~trafficking in persons (Section 16‑3‑2020) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;~~

~~(18)~~ ~~criminal sexual conduct when the victim is a spouse (Section 16‑3‑658);~~

~~(19)~~ ~~sexual battery of a spouse (Section 16‑3‑615);~~

~~(20)~~ ~~sexual intercourse with a patient or trainee (Section 44‑23‑1150);~~

~~(21) criminal solicitation of a minor if the purpose or intent of the solicitation or attempted solicitation was to:~~

~~(a)~~ ~~persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16‑15‑375(5);~~

~~(b)~~ ~~perform a sexual activity in the presence of the person solicited (Section 16‑15‑342); or~~

~~(22)~~ ~~administering, distributing, dispensing, delivering, or aiding, abetting, attempting, or conspiring to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit a crime listed in Section 44‑53‑370(f), except petit larceny or grand larceny.~~

~~(23)~~ ~~any other offense specified by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109‑248), the Sex Offender Registration and Notification Act (SORNA).~~

(a) criminal sexual conduct in the third degree (Section 16‑3‑654);

(b) kidnapping (Section 16‑3‑910) of a person eighteen years of age or older except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;

(c) incest (Section 16‑15‑20);

(d) buggery (Section 16‑15‑120);

(e) peeping, voyeurism, or aggravated voyeurism (Section 16‑17‑470);

(f) a person, regardless of age, who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in this State, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of indecent exposure or of a similar offense in other jurisdictions is required to register pursuant to the provisions of this article if the court makes a specific finding on the record that based on the circumstances of the case the convicted person should register as a sex offender;

(g) sexual intercourse with a patient or trainee (Section 44‑23‑1150);

(h) administering, distributing, dispensing, delivering, or aiding, abetting, attempting, or conspiring to administer, distribute, dispense, or deliver a controlled substance or gamma hydroxy butyrate to an individual with the intent to commit a crime listed in Section 44‑53‑370(f), except petit larceny or grand larceny; or

(i) any other offense required by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109‑248), the Sex Offender Registration and Notification Act (SORNA).

(2) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as a Tier II offender:

(a) criminal sexual conduct in the second degree (Section 16‑3‑653);

(b) engaging a child for sexual performance (Section 16‑3‑810);

(c) producing, directing, or promoting sexual performance by a child (Section 16‑3‑820);

(d) trafficking in persons (Section 16‑3‑2020) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense;

(e) criminal sexual conduct with minors, second degree (Section 16‑3‑655(B)). If evidence is presented at the criminal proceeding and the court makes a specific finding on the record that the conviction obtained for this offense resulted from consensual sexual conduct, as contained in Section 16‑3‑655(B)(2) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register pursuant to the provisions of this article;

(f) criminal sexual conduct with minors, third degree (Section 16‑3‑655(C));

(g) criminal solicitation of a minor if the purpose or intent of the solicitation or attempted solicitation was to:

(i) persuade, induce, entice, or coerce the person solicited to engage or participate in sexual activity as defined in Section 16‑15‑375(5);

(ii) perform a sexual activity in the presence of the person solicited (Section 16‑15‑342); or

(h) violations of Article 3, Chapter 15, Title 16 involving a minor.

(3) For purposes of this article, a person who has been convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses shall be referred to as a Tier III offender:

(a) criminal sexual conduct in the first degree (Section 16‑3‑652);

(b) criminal sexual conduct with minors, first degree (Section 16‑3‑655(A));

(c) criminal sexual conduct: assaults with intent to commit (Section 16-3-656);

(d) kidnapping (Section 16‑3‑910) of a person under eighteen years of age except when the offense is committed by a parent;

(e) criminal sexual conduct when the victim is a spouse (Section 16‑3‑658);

(f) sexual battery of a spouse (Section 16‑3‑615); or

(g) any offense listed or described in this section committed after the offender becomes a Tier I or Tier II offender.

(D) Upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person of an offense not listed in this article, the presiding judge may order as a condition of sentencing that the person be included in the sex offender registry if good cause is shown by the ~~solicitor~~ prosecution.

(E) SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.

(F) If an offender receives a pardon for the offense for which he was required to register, the offender must reregister as provided by Section 23‑3‑460 and may not be removed from the registry except:

(1) as provided by the provisions of subsection (E); or

(2) if the pardon is based on a finding of not guilty specifically stated in the pardon.

(G) If an offender files a petition for a writ of habeas corpus or a motion for a new trial pursuant to Rule 29(b), South Carolina Rules of Criminal Procedure, based on newly discovered evidence, the offender must reregister as provided by Section 23‑3‑460 and may not be removed from the registry except:

(1) as provided by the provisions of subsection (E); or

(2)(a) if the circuit court grants the offender's petition or motion and orders a new trial; and

(b) a verdict of acquittal is returned at the new trial or entered with the state's consent.”

SECTION 2. Sections 23-3-460(A) and (C) of the 1976 Code are amended to read:

“(A) A person required to register pursuant to this article is required to register biannually for life subject to an order of the court pursuant to the provisions of Section 23-3-463. For purposes of this article, "biannually" means each year during the month of his birthday and again during the sixth month following his birth month. The person required to register shall register and must reregister at the sheriff's department in each county where he resides, owns real property, is employed, or attends any public or private school, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school. A person determined by a court to be a sexually violent predator pursuant to state law is required to verify registration and be photographed every ninety days by the sheriff's department in the county in which he resides unless the person is committed to the custody of the State, and verification will be held in abeyance until his release.”

“(C) If a person required to register pursuant to this article changes his address within the same county, that person must send written notice of the change of address to the sheriff within three business days of establishing the new residence. If a person required to register under this article owns or acquires real property or is employed within a county in this State, or attends, is enrolled, volunteers, interns, or carries on a vocation at any public or private school, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school, he must register with the sheriff in each county where the real property, employment, or the public or private school is located within three business days of acquiring the real property, beginning employment at any school, or attending the public or private school.”

SECTION 3. Article 7, Chapter 3, Title 23 of the 1976 Code is amended by adding:

“Section 23-3-463. (A) An offender may file a motion with the circuit court to request an order to be removed from the requirements of the sex offender registry act:

(1) if he is a Tier I offender or if the offender was required to register based on an adjudication of delinquency, after fifteen years from the date of discharge from incarceration without supervision, or from the termination of active supervision of probation, parole, or any other active alternative to incarceration; or

(2) if he is a Tier II or Tier III offender, after thirty years from the date of discharge from incarceration without supervision, or from the termination of active supervision of probation, parole, or any other active alternative to incarceration.

(B) If the offender is required to register due to an out-of-state or federal conviction, the timeframe for the equivalent tier under the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109 248), the Sex Offender Registration and Notification Act (SORNA), shall apply.

(C) The motion must be filed in the county in which the underlying conviction occurred if the conviction occurred within the state, or if the conviction occurred outside of the State, the county in which the offender resides. Venue may be moved by order of the Court.

(D) The court may direct that a qualified evaluator designated by the South Carolina Department of Mental Health conduct an evaluation whether the offender poses a foreseeable risk to re-offend. The offender must fully cooperate with any psychological or medical evaluation if ordered by the court. After the evaluation by the qualified evaluator designated by the Department, if the offender or the prosecutor seeks an independent evaluation by an independent qualified evaluator, then that evaluation must be completed within ninety days after receipt of the report by the Department evaluator. The court may grant an extension upon the request of the independent qualified evaluator and a showing of extraordinary circumstances. Any qualified evaluator who will be submitted as an expert at a hearing on the motion must submit a written report available to both parties at least ten days before the hearing.

(E) The court must make a determination upon a finding by clear and convincing evidence that the offender is no longer a foreseeable risk to re-offend and that it is in the best interest of justice to grant the motion for removal from the requirement of registration.

(F) The State must be named as the respondent to the action. Service must be made upon, and the State shall be represented by, the prosecution office that obtained the underlying conviction for which the offender is required to register or, if the conviction occurred outside of the State, the Attorney General. All requirements of the Victim’s Rights Act including reasonable notice must be observed. The following agencies have standing to request to be made a party to the motion:

(1) any original prosecuting solicitor’s office for an underlying qualifying conviction, if not already representing the state;

(2) the local solicitor’s office where the offender resides at the time of the hearing, if not already representing the state; or

(3) the Attorney General’s Office, if not already representing the state.

(G) If a person is convicted of multiple offenses requiring registration, and the offenses fall within different tiers, the person may only petition for removal of the registration requirement once the required time passes for the highest tier offense they have been convicted of that requires registration.

(H) If the motion is denied, the person may not file for removal from the registry pursuant to this section again until five years after the date of the final order.”

SECTION 4. Section 23-3-490 of the 1976 Code is amended to read:

“Section 23‑3‑490. (A) Information collected for the offender registry is open to public inspection~~, upon request to the county sheriff.~~ and may be made available on the internet or by other electronic means.

(B) A sheriff or SLED ~~must~~ may release information regarding persons required to register under this article to a member of the public if the request is made in writing or via electronic means, on a form prescribed or utilized by SLED. The sheriff or SLED must provide the person making the request with the full names of the registered sex offenders, any aliases, any other identifying physical characteristics, each offender's date of birth, the home address on file, the offense for which the offender was required to register pursuant to Section 23‑3‑430, and the date, city, and state of conviction. A photocopy of a current photograph must also be provided. ~~The sheriff must provide to a newspaper with general circulation within the county a listing of the registry for publication.~~

A sheriff or any law enforcement entity who provides the offender registry for publication or a newspaper which publishes the registry, or any portion of it, is not liable and must not be named as a party in an action to recover damages or seek relief for errors or omissions in the publication of the offender registry; however, if the error or omission was done intentionally, with malice, or in bad faith the sheriff or newspaper is not immune from liability.

~~(B)~~(C) A person may request ~~on a form prescribed by SLED~~ a list of registered sex offenders residing in a city, county, or zip code zone or a list of all registered sex offenders within the State from SLED. A person may request information regarding a specific person who is required to register under this article from SLED ~~if the person requesting the information provides the name or address of the person about whom the information is sought~~. SLED shall provide the person making the request with the full names of the requested registered sex offenders, any aliases, any other identifying physical characteristics, each offender's date of birth, the home address on file, the offense for which the offender was required to register pursuant to Section 23‑3‑430, and the date, city, and state of conviction. The State Law Enforcement Division may charge a reasonable fee to cover the cost of copying and distributing sex offender registry lists as provided for in this section. These funds must be used for the sole purpose of offsetting the cost of providing sex offender registry lists.

~~(C)~~(D) Nothing in subsection (A) prohibits a sheriff or SLED from disseminating information contained in subsection (A) regarding persons who are required to register under this article if the sheriff or another law enforcement officer has reason to believe the release of this information will deter criminal activity or enhance public safety. The sheriff shall notify the principals of public and private schools, and the administrator of child day care centers and family day care centers of any offender whose address is within one‑half mile of the school or business.

~~(D)~~(E) For purposes of this article, information on a person adjudicated delinquent in family court for an offense listed in Section 23‑3‑430 must be made available to the public in accordance with the following provisions:

(1) If a person has been adjudicated delinquent for committing any of the following offenses, information must be made available to the public pursuant to subsections (A) and (B):

(a) criminal sexual conduct in the first degree (Section 16‑3‑652);

(b) criminal sexual conduct in the second degree (Section 16‑3‑653);

(c) criminal sexual conduct with minors, first degree (Section 16‑3‑655(A));

(d) criminal sexual conduct with minors, second degree (Section 16‑3‑655(B));

(e) engaging a child for sexual performance (Section 16‑3‑810);

(f) producing, directing, or promoting sexual performance by a child (Section 16‑3‑820);

(g) kidnapping (Section 16‑3‑910); or

(h) trafficking in persons (Section 16‑3‑2020) except when the court makes a finding on the record that the offense did not include a criminal sexual offense or an attempted criminal sexual offense.

(2) Information shall only be made available, upon request, to victims of or witnesses to the offense, public or private schools, child day care centers, family day care centers, businesses or organizations that primarily serve children, women, or vulnerable adults, as defined in Section 43‑35‑10(11), for persons adjudicated delinquent for committing any other offenses requiring registration. ~~of the following offenses:~~

~~(a)~~ ~~criminal sexual conduct in the third degree (Section 16‑3‑654);~~

~~(b)~~ ~~criminal sexual conduct: assaults with intent to commit (Section 16‑3‑656);~~

~~(c)~~ ~~criminal sexual conduct with a minor: assaults with intent to commit (Section 16‑3‑656);~~

~~(d)~~ ~~criminal sexual conduct with minors, third degree (Section 16‑3‑655(C));~~

~~(e)~~ ~~peeping (Section 16‑17‑470);~~

~~(f)~~ ~~incest (Section 16‑15‑20);~~

~~(g)~~ ~~buggery (Section 16‑15‑120);~~

~~(h)~~ ~~violations of Article 3, Chapter 15 of Title 16 involving a minor, which violations are felonies; or~~

~~(i)~~ ~~indecent exposure.~~

(3) A person who is under twelve years of age at the time of his adjudication, conviction, guilty plea, or plea of nolo contendere for a first offense of any offense listed in Section 23‑3‑430(C) shall be required to register pursuant to the provisions of this chapter; however, the person's name or any other information collected for the offender registry shall not be made available to the public.

(4) A person who is under twelve years of age at the time of his adjudication, conviction, guilty plea, or plea of nolo contendere for any offense listed in Section 23‑3‑430(C) and who has a prior adjudication, conviction, guilty plea, or plea of nolo contendere for any offense listed in Section 23‑3‑430(C) shall be required to register pursuant to the provisions of this chapter, and all registry information concerning that person shall be made available to the public pursuant to items (1) and (2).

(5) Nothing in this section shall prohibit the dissemination of all registry information to law enforcement.

~~(E)~~(F) For purposes of this section, the use of the internet or other computerized or electronic transmission of data or other electronic or similar means is permitted.”

SECTION 5. This act is retroactive and shall apply to any resident of this State who is required to register as a sex offender pursuant to the provisions of Article 7, Chapter 3, Title 23 and who meets the requirements set forth in the act.

SECTION 6. This act takes effect upon approval by the Governor.

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