



## South Carolina Law Enforcement Division

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### **SLED GUIDANCE ON THE UPDATES TO THE SOUTH CAROLINA SEX OFFENDER REGISTRY ACT**

#### **ADULT TIER III OFFENDERS – South Carolina Adjudication or Conviction**

On May 23, 2022, Governor Henry D. McMaster signed former House Bill 4075 into law. This Act affords all sex offenders in South Carolina a mechanism to seek removal from South Carolina's lifetime sex offender registry in response to the South Carolina Supreme Court's decision in *Powell v. Keel*. This bill creates state tiers for offenders and provides reasonable avenues for removal based on the offender's applicable state tier. Moving forward, Adult **Tier III** Offenders in South Carolina are offenders convicted of the following offenses:

- (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.

**Duration and Frequency of Registration** - Adult **Tier III** Offenders are still required to register with the same frequency as before the passage of this bill, and this frequency is still dictated by the offender's applicable federal SORNA tier – not the new state tiers. Specifically, Adult Tier III Offenders in South Carolina are required to “register biannually for life” for all persons who are not classified as Tier III offenders pursuant to the federal SORNA or “every ninety days” for life for all persons “classified as Tier III pursuant to 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).” See S.C. Code Ann. § 23-3-460(A), (B). However, this lifetime registration requirement is now subject to the removal provisions set forth below.



*An Accredited Law Enforcement Agency*



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### **Removal Process and Requirements** - For Adult Tier III Offenders:

For Adult Tier III Offenders, there is no administrative request to SLED for termination. Rather, S.C. Code Ann. § 23-4-463 provides that an Adult Tier III Offender **may file a motion with the general sessions court** to request an order to be removed from the requirements of the sex offender registry act if **the offender is a Tier III offender after thirty years from the date of discharge from incarceration without supervision, or the termination of active supervision of probation, parole, or any other active alternative to incarceration.**

In accordance with S.C. Code Ann. § 23-3-463, the State of South Carolina must be named as the respondent to the action and 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. SLED is not a party to such action and should not be named. The following agencies also 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.

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

However, a person requesting a hearing under this section is entitled to the assistance of counsel, and if the person is indigent, the court must appoint counsel to assist the person.

In addition, 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 reoffend. For any such evaluation, the court must order the offender to comply with all testing and assessments deemed necessary by the evaluator. 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 request 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.

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### **Re-applying After Denial** – For Adult Tier III Offenders:

If an appeal motion is filed and 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.

### **Other Avenues of Removal** – For Adult Tier III Offenders:

While not a part of the updates in House Bill 4075, S.C. Code Ann. § 23-3-430(E), (F), and (G) also provide statutory mechanisms of removal for adult Tier II Offenders in South Carolina.

**S.C. Code Ann. § 23-3-430(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.

**S.C. Code Ann. § 23-3-430(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.**

**S.C. Code Ann. § 23-3-430(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.