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**VERSIONS OF THIS BILL**

[12/11/2024](https://www.scstatehouse.gov/sess126_2025-2026/prever/28_20241211.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING SECTION 16‑15‑390 SO AS TO CREATE THE OFFENSE OF OBSCENE VISUAL REPRESENTATIONS OF CHILD SEXUAL ABUSE, DEFINE TERMS, AND ESTABLISH PENALTIES; BY AMENDING SECTION 23‑3‑430, RELATING TO THE SEX OFFENDER REGISTRY, SO AS TO ADD THE OFFENSE OF OBSCENE VISUAL REPRESENTATIONS OF CHILD SEXUAL ABUSE TO THE SEX OFFENDER REGISTRY; AND BY AMENDING SECTION 23‑3‑462, RELATING TO TERMINATION OF REGISTRATION REQUIREMENTS, SO AS TO MAKE CONFORMING CHANGES.

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

SECTION 1. Article 3, Chapter 15, Title 16 of the S.C. Code is amended by adding:

 Section 16‑15‑390. (A) As used in this section:

 (1) “Obscene” has the same meaning as Section 16‑15‑305.

 (2) “Visual depiction or representation” means and includes undeveloped film and videotape, and data stored on a computer disk or by electronic means that is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer‑generated image or picture, whether made or produced by electronic, mechanical, or other means.

 (B) Any person who knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction or representation of any kind, including a drawing, cartoon, sculpture, or painting that depicts a minor engaging in sexually explicit conduct, sexually explicit activity, or sexually explicit nudity, and is obscene, or attempts or conspires to do so, is guilty of a felony and, upon conviction, must be imprisoned not less than two years nor more than ten years. No part of the minimum sentence may be suspended nor is the individual convicted eligible for parole until he has served the minimum sentence.

 (C) Any person who knowingly possesses a visual depiction or representation of any kind, including a drawing, cartoon, sculpture, or painting, that depicts a minor engaging in sexually explicit conduct, sexually explicit activity, or sexually explicit nudity, and is obscene, or attempts or conspires to do so is guilty of a felony and, upon conviction, must be imprisoned no more than ten years.

 (D) The offense is a misdemeanor to be heard by the family court if the person charged under this section is a minor, and the minor has no prior adjudication under this section or for any offense for which a person may be included in the sex offender registry. The family court may order behavioral health counseling from an appropriate agency or provider, as a condition of adjudicating a minor.

 (E) It is not a required element of any offense under this section that the minor depicted actually exists.

 (F) This section does not apply to an employee of a law enforcement agency, including the State Law Enforcement Division, a prosecuting agency, including the South Carolina Attorney General’s Office, or the South Carolina Department of Corrections, who, while acting within the employee’s official capacity in the course of an investigation or criminal proceeding, is in possession of material that contains a visual representation of a minor engaging in sexual activity or appearing in a state of sexually explicit nudity when a reasonable person would infer the purpose is sexual stimulation. An employee’s official capacity in the course of such investigation or criminal proceeding includes making materials available for inspection to the defendant’s counsel in response to discovery requests.

SECTION 2. Section 23‑3‑430(C) of the S.C. Code is amended to read:

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

 (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 or pled guilty or nolo contendere in this State, or who has been convicted or pled guilty or nolo contendere in a comparable court in the United States, or who has been convicted or 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;

 (i) any other offense as described in Section 23‑3‑430(D), or

 (j) 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).

 (k) obscene visual representation of a child sexual abuse (Section 16‑15‑390). If the person is under eighteen years of age and was adjudicated in the family court, then the adjudicated minor is not an offender and is not required to register pursuant to the provisions of this article.

 (2) For purposes of this article, a person who has been convicted of, or pled guilty or nolo contendere to 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, or in any court of competent jurisdiction, 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)). If evidence is presented at the criminal proceeding, or in any court of competent jurisdiction, 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;

 (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, except as otherwise provided in this article.

 (3) For purposes of this article, a person who has been convicted of, or pled guilty or nolo contendere to 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.

SECTION 3. Section 23‑3‑462(A) of the S.C. Code is amended to read:

 (A) After successful completion of the requirements of this section, an offender may apply to the South Carolina Law Enforcement Division for the termination of the requirements of registration pursuant to this article. If it is determined that the offender has met the requirements of this section, SLED shall remove the offender's name and identifying information from the sex offender registry and shall notify the offender within one hundred twenty days that the offender has been relieved of the registration requirements of this article.

 (1) An offender may file a request for termination of the requirement of registration with SLED, in a form and process established by the agency:

 (a) after fifteen years of having been registered for at least fifteen years or after fifteen 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, if the offender was required to register based on an adjudication of delinquency or the offender was required to register as is a Tier I offender;

 (b) after fifteen years of having been registered for at least twenty‑five years or after twenty‑five 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, if the offender was convicted as an adult, and was required to register as is a Tier II offender;

 (c) an a Tier I or Tier II offender who was required to register as an offender because of a conviction in another state or because of a federal conviction may apply to be removed from the requirements of the registry if he is eligible to be removed under the laws of the jurisdiction where the conviction occurred.

 (2) An offender who was convicted as an adult, and who is required to register as a Tier III offender may not file a request for termination of registration with SLED nor shall any such request be granted pursuant to this subsection.

 (3) The requesting offender must have successfully completed all sex offender treatment programs that have been required.

 (4) The requesting offender must not have been convicted of failure to register within the previous ten years.

 (5) The offender must not have been convicted of any additional sexual offense or violent sexual offense after being placed on the registry.

 (6) A filing fee, as set by SLED but not to exceed two hundred fifty dollars, shall be paid to file the request for termination of registration requirements. The initial application may be filed with SLED and the administrative review may begin one hundred twenty days prior to the date specified in subsection (A)(1); however, any removal may not occur prior to the date specified.

SECTION 4. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 5. This act takes effect upon approval by the Governor.

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