CHAPTER 3

South Carolina Law Enforcement Division

ARTICLE 1

General Provisions

**SECTION 23‑3‑10.** Creation, chief and personnel of South Carolina Law Enforcement Division.

 There is created the South Carolina Law Enforcement Division (SLED). The division must be headed by a chief appointed by the Governor with the advice and consent of the Senate and shall hold office until his successor is appointed and qualified. The term of the chief is six years. On the effective date of the provisions of this section providing for a six‑year term for the chief, a successor to the chief serving on this date must be appointed as provided herein. Nothing herein prevents the chief serving on this date from being reappointed to additional six‑year terms. The chief may only be removed pursuant to the provisions of Section 1‑3‑240 of the 1976 Code. The agents and officers of the division must be commissioned by the Governor upon the recommendation of the chief. The agents and officers shall have that rank or title as may be provided under the State Employees Classification System. The chief may appoint other personnel considered necessary and as provided for in the annual appropriations act. All agents and officers commissioned by the Governor are subject to discharge for cause which must be subject to review as is now provided by law for other state employees.

HISTORY: 1962 Code Section 53‑16; 1974 (58) 2878; 1993 Act No. 181, Section 338.

CROSS REFERENCES

Chief of SLED an ex officio member of State Child Fatality Advisory Committee, see Section 63‑11‑1930.

Chief of South Carolina Law Enforcement Division an ex officio member of South Carolina Public Safety Coordinating Council, see Section 23‑6‑510.

Constitutional provision regarding selection, duties, and compensation of law enforcement officials, see SC Const, Art 5, Section 24.

Creation of the Missing Person Information Center as part of the State Law Enforcement Division, see Sections 23‑3‑200 et seq.

Division’s responsibilities with respect to regulation of bail bondsmen and runners, see Section 38‑53‑20.

Head of State Law Enforcement Division being ex officio voting member of Governor’s Committee on Criminal Justice, Crime and Delinquency, see Section 23‑4‑110.

Provision that the South Carolina Law Enforcement Division is an “authorized agency” for purposes of the Motor Vehicle Theft and Motor Vehicle Insurance Fraud Reporting‑Immunity Act, see Section 38‑77‑1120.

Requirement that every court clerk report the disposition of every case in the Court of General Sessions to the State Law Enforcement Division, see Section 14‑17‑325.

Requirement that the Law Enforcement Division assist in the investigation of any accident involving injury or death of person under twenty‑one when use of alcohol is suspected, see Section 23‑3‑160.

Requirement that the Law Enforcement Division assist in the investigation of any traffic‑related accident causing injury or death to person where there is cause to believe that the use of illegal drugs or controlled substances was involved, see Section 23‑3‑170.

SLED to operate sex offender registry, see Section 23‑3‑410.

State Law Enforcement Division reorganized, see Section 1‑30‑120.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 32, South Carolina Law Enforcement Division (SLED).

**SECTION 23‑3‑15.** Additional jurisdiction, authority and responsibilities; exclusive authority; other agencies or departments to assist SLED.

 (A) In addition to those authorities and responsibilities set forth in this chapter, the South Carolina Law Enforcement Division shall have specific and exclusive jurisdiction and authority statewide, on behalf of the State, in matters including but not limited to the following functions and activities:

 (1) the investigation of organized criminal activities or combined state‑federal interstate criminal activities, all general criminal investigations, arson investigation and emergency event management pertaining to explosive devices;

 (2) the maintenance and operation of a statewide comprehensive forensic sciences laboratory;

 (3) covert investigation of illegal activities pertaining to and the interdiction of narcotics and other illicit substances;

 (4) operation and maintenance of a central, statewide criminal justice data base and data communication system;

 (5) establishment and operation of highly specialized, tactical response law enforcement units within the division;

 (6) operation and regulation of state polygraph examination services;

 (7) law enforcement, regulation enforcement, and inspections under Title 61;

 (8) the coordination of counter terrorism efforts, including prevention against, preparation for, response to, and crisis management of acts of terrorism, in or affecting this State; coordination of federal grants associated with homeland security; creation of councils appropriate to its mission; and service as the Governor’s representative to the United States Department of Homeland Security; and

 (9) other activities not inconsistent with the mission of the division or otherwise proscribed by law.

 (B) No other state agency or department having personnel who are commissioned law enforcement officers may engage in any of the activities herein set forth without the express permission of the Chief of the South Carolina Law Enforcement Division. Any state agencies or departments having commissioned law enforcement personnel shall assist the South Carolina Law Enforcement Division at any time the Chief of SLED requests assistance in carrying out the statutory duties of the division.

 (C) The South Carolina Law Enforcement Division is responsible for the enforcement of all criminal laws, misdemeanors, and felonies, and civil laws, the violation of which may result in a fine or other penalty being assessed against the violator, which laws are now enforced by law enforcement personnel employed by and under the jurisdiction of the Alcoholic Beverage Control Commission. These civil and criminal laws also include regulations and ordinances pertinent thereto. The duties, functions, and powers of these law enforcement personnel are devolved upon the South Carolina Law Enforcement Division and the law enforcement personnel of this agency on the effective date of this section shall perform their duties and functions under the auspices of the division and shall become a part of the South Carolina Law Enforcement Division in the manner provided by law.

HISTORY: 1993 Act No.181, Section 339; 2003 Act No. 90, Section 1.

CROSS REFERENCES

Firefighter mobilization, SLED jurisdiction, see Section 23‑49‑65.

Library References

Criminal Law 1222.

States 45.

Westlaw Topic Nos. 110, 360.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

C.J.S. States Sections 145 to 146, 157 to 161, 249.

Attorney General’s Opinions

Discussion of the delegation of SLED’s authority to enforce the laws and regulations concerning alcoholic beverages under Title 61 of the S.C. Code to local law enforcement officers. S.C. Op.Atty.Gen. (Nov. 5, 2013) 2013 WL 6143935.

Citations for civil contempt would not constitute “criminal history record information” for purposes of being entered into the State’s Criminal Information and Communication System or Federal Bureau of Investigation’s National Crime Information Center databases. S.C. Op.Atty.Gen. (October 8, 2012) 2012 WL 5464987.

Notes of Decisions

Regulatory searches 1

1. Regulatory searches

Warrantless search conducted by special law enforcement agent of illegal video gaming machines located in convenience store, which sold beer and wine pursuant to off premises permit, fell within the pervasively regulated industry exception to warrant requirement; agent conducted regulatory alcoholic beverage license inspection of convenience store pursuant to statute, authorizing agents to inspect premises licensed to sell beer or wine, agent observed two machines that appeared to be illegal gambling machines, and agent used keys provided by store clerk to open machines to determine whether they contained money after discovering illegal games on the machine. South Carolina Department of Revenue v. Meenaxi, Inc. (S.C.App. 2016) 417 S.C. 639, 790 S.E.2d 792. Searches And Seizures 24

**SECTION 23‑3‑20.** Bond and oath of chief and agents; reappointment.

 Every officer and agent commissioned pursuant to this article shall file a bond, or be covered by a surety bond, of not less than two thousand dollars with the South Carolina Law Enforcement Division, subscribed by a licensed surety company, conditioned for the faithful performance of his duties, for the prompt and proper accounting of all funds coming into his hands, and for the payment of a judgment recovered against him in a court of competent jurisdiction upon a cause of action arising out of breach or abuse of official duty or power and for the payment of damages sustained by a member of the public from an unlawful act of the officer or agent. However, coverage under the bond does not include damage to persons or property arising out of the negligent operation of a motor vehicle. The bond may be individual, schedule, or blanket and on a form approved by the Attorney General. The premiums on the bonds must be paid by the division.

 All officers and agents of the division shall take and subscribe to the oath provided by law for peace officers.

HISTORY: 1962 Code Section 53‑17; 1974 (58) 2878; 1993 Act No. 181, Section 340.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 32, South Carolina Law Enforcement Division (SLED).

**SECTION 23‑3‑25.** Assignment of personnel; divisions.

 The Chief of the South Carolina Law Enforcement Division may assign personnel of the division to particular areas of enforcement as appropriate for the enforcement of the laws and regulations of this State which the South Carolina Law Enforcement Division is charged with enforcing. For this purpose, the chief may establish divisions within the department to carry out particular duties as assigned by the chief.

HISTORY: 1993 Act No. 181, Section 341.

**SECTION 23‑3‑30.** Supervision of security personnel employed by State.

 All security personnel employed by the State, other than at correctional institutions shall be under the direct supervision of the South Carolina Law Enforcement Division.

HISTORY: 1962 Code Section 53‑4.1; 1966 (54) 2596; 1983 Act No. 76, Section 1; 1983 Act No. 151, Part II, Section 46.

**SECTION 23‑3‑40.** Recordation and classification of fingerprints taken in criminal investigations.

 All sheriff’s and police departments in South Carolina shall make available to the Criminal Justice Records Division of the State Law Enforcement Division for the purpose of recordation and classification all fingerprints taken in criminal investigations resulting in convictions. The State Law Enforcement Division shall pay for the costs of such program and prepare the necessary regulations and instructions for the implementation of this section.

HISTORY: 1962 Code Section 53‑35; 1971 (57) 998.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

Attorney General’s Opinions

Section 23‑3‑130 is not sufficient authority for the regulations promulgated by the State Law‑Enforcement Division on December 10, 1976, insofar as they require fingerprint information of every person under lawful arrest, because this regulation amends and enlarges Section 23‑3‑40. 1976‑77 Op. Atty Gen, No. 77‑268, p 203.

**SECTION 23‑3‑45.** Acceptance of fingerprints of applicants for admission to bar; exchange of records with Board of Law Examiners.

 The South Carolina Law Enforcement Division is authorized to accept fingerprints of applicants for admission to the South Carolina Bar and, to the extent provided for by federal law, to exchange state, multistate, and federal criminal history records with the South Carolina Board of Law Examiners for licensing purposes.

HISTORY: 1986 Act No. 326, Section 1.

CROSS REFERENCES

State Board of Law Examiners, see Section 40‑5‑210.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

United States Supreme Court Annotations

Denial of medical or legal professional license as violating due process. 6 L Ed 2d 1328.

Licensing and regulation of attorneys as restricted by rights of free speech, expression, and association under First Amendment. 56 L Ed 2d 841.

**SECTION 23‑3‑47.** South Carolina Commission on National and Community Service; criminal background checks.

 A person seeking a covered position, as defined in 45 C.F.R. 2540, or who otherwise volunteers or serves in a position supported, sponsored, or administered by the South Carolina Commission on National and Community Service (commission), must undergo a state criminal history background check, supported by fingerprints by the South Carolina Law Enforcement Division (SLED), and a national criminal history background check, supported by fingerprints by the Federal Bureau of Investigation (FBI), unless the commission determines that the background check requirement for that person has been satisfied through another process. The results of these criminal history background checks must be reported to the commission. SLED is authorized to retain the fingerprints for certification purposes and for notification of the commission regarding criminal charges. The cost of the state criminal history background check may not exceed eight dollars and must be paid by the commission upon application for the state check. The cost of the national criminal history background check is established by the FBI and must be paid by the commission upon application for the national check.

HISTORY: 2014 Act No. 163 (S.817), Section 1, eff May 16, 2014.

Federal Aspects

National Service Criminal History Check eligibility criteria, see 45 C.F.R. Section 2540.201.

**SECTION 23‑3‑50.** Revenue from certain fees and licenses to be remitted to State Treasurer.

 Notwithstanding any other provisions of law, all revenue from fees and licenses received by the State Law Enforcement Division related to enforcement and regulation of private detective and security companies (Section 40‑17‑160 of the 1976 Code), gun dealers (Section 16‑23‑10), gun permits (Section 17‑5‑110) and massage parlors (Section 40‑29‑160) shall be remitted to the State Treasurer as collected and credited to the general fund of the State.

HISTORY: 1979 Act No. 199, Part II, Section 11.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 23‑31‑110 following “gun permits” was removed. This section was repealed by 2012 Act No. 285, Section 2.

Library References

States 122.

Westlaw Topic No. 360.

C.J.S. States Section 373.

**SECTION 23‑3‑55.** Expenditure of revenue.

 Notwithstanding any other provision of law, all revenue generated by the State Law Enforcement Division from the sale of vehicles, various equipment, and gasoline, and insurance claims during the prior fiscal year may be retained, carried forward, and expended for the purpose of purchasing like items.

HISTORY: 2008 Act No. 353, Section 2, Pt 19B, eff July 1, 2009.

**SECTION 23‑3‑65.** South Carolina Law Enforcement Assistance Program to provide counseling services and other support services.

 The South Carolina Law Enforcement Division shall administer the South Carolina Law Enforcement Assistance Program (SC LEAP). The purpose of this program includes, but is not limited to, responding to and providing counseling services to all requesting law enforcement agencies and departments in the State which have experienced deaths or other tragedies involving law enforcement officers or other employees as well as providing counseling services to law enforcement officers experiencing post‑traumatic stress disorder and other trauma and stress‑related disorders, and providing any other critical incident support services for all South Carolina law enforcement agencies and departments upon their request. The SC LEAP also may utilize local critical incident support service providers including, but not limited to, chaplains, mental health professionals, and law enforcement peers. In consultation with the professional staff of the SC LEAP and the South Carolina Law Enforcement Chaplains’ Association, the South Carolina Criminal Justice Academy shall develop a course of training for the critical incident stress debriefing and peer support team.

HISTORY: 2000 Act No. 379, Section 2; 2017 Act No. 46 (S.173), Section 3, eff May 19, 2017.

Effect of Amendment

2017 Act No. 46, Section 3, in the second sentence, inserted “as well as providing counseling services to law enforcement officers experiencing post‑traumatic stress disorder and other trauma and stress‑related disorders”, and made nonsubstantive changes.

CROSS REFERENCES

Continuing law enforcement education credits in mental health or addictive disorders, see Section 23‑23‑55.

**SECTION 23‑3‑70.** Plain language communications requirements for local and state emergency, fire, and law enforcement agencies.

 Notwithstanding another provision of law, each local and state emergency, fire, and law enforcement agency shall either:

 (1) adopt plain language communications as outlined by the Department of Homeland Security as its agency’s standard; or

 (2) implement and submit for review by the State Law Enforcement Division a plan for the use of plain language communication during periods of a declared emergency.

HISTORY: 2008 Act No. 296, Section 3, eff June 11, 2008.

**SECTION 23‑3‑75.** Administrative subpoena to a financial institution, public or private utility, or communications provider; disclosure; privacy of information; regulations; applicable federal law.

 (A) For purposes of this section:

 (1) “Attorney General” means the Attorney General of the State of South Carolina or the Attorney General’s designee who is employed by the Attorney General and is an officer of the court.

 (2) “SLED” means the South Carolina Law Enforcement Division.

 (B) An officer of the court who is employed by SLED may issue an administrative subpoena to a financial institution, public or private utility, or communications provider for the production of subscriber or customer information as described in subsection (E), not including the contents of any communications, if:

 (1) SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the following financial crimes:

 (a) breach of trust with fraudulent intent (Section 16‑13‑230);

 (b) obtaining a signature or property by false pretenses (Section 16‑13‑240);

 (c) financial identity fraud (Section 16‑13‑510 et seq);

 (d) financial transaction card or number theft (Section 16‑14‑20 et seq);

 (e) financial transaction card fraud (Section 16‑14‑60 et seq);

 (f) computer crimes (Section 16‑16‑10 et seq); or

 (g) crimes against a federally chartered or insured financial institution (Section 34‑3‑110); and

 (2) SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to:

 (a) the court not being able to issue a warrant or subpoena in a timely fashion and the immediate need to obtain the information; or

 (b) SLED having reasonable cause to believe that obtaining a warrant or subpoena from the court could result in the subscriber or customer, or an agent of the subscriber or customer, destroying, erasing, transferring, or otherwise changing the information in order to knowingly conceal evidence material to an investigation.

 (C)(1) An administrative subpoena must be made in writing upon oath or affirmation of the officer of the court who is employed by SLED. The officer must sign the administrative subpoena affirming that SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the financial crimes listed in subsection (B)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (B)(2).

 (2) The officer must submit the administrative subpoena to the Attorney General for review prior to issuing the administrative subpoena to a financial institution, public or private utility, or communications provider. The officer must not issue the administrative subpoena without authorization by the Attorney General pursuant to subsection (D). The officer may submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means. If the officer, after a good faith effort, is not able to submit the administrative subpoena with signature to the Attorney General in person, by mail, by facsimile, or by other electronic means, the officer may orally or electronically explain and affirm the administrative subpoena to the Attorney General.

 (D)(1) The Attorney General must authorize an officer of the court who is employed by SLED to issue an administrative subpoena to a financial institution, public or private utility, or communications provider if, after review, the Attorney General determines that SLED has reasonable cause to believe that the information is material to an active investigation of at least one of the financial crimes listed in subsection (B)(1), and that SLED is not otherwise able to obtain a warrant or subpoena for the information from a court due to one of the reasons listed in subsection (B)(2).

 (2) If the Attorney General authorizes the officer of the court who is employed by SLED to issue the administrative subpoena, the Attorney General must sign and return the administrative subpoena to SLED. The Attorney General may return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means.

 (3) If the Attorney General, after a good faith effort, is not able to return the administrative subpoena with signature to SLED in person, by mail, by facsimile, or by other electronic means, or the officer of the court employed by SLED was not able to submit the administrative subpoena with signature to the Attorney General and had to orally or electronically explain and affirm the administrative subpoena, the Attorney General may orally or electronically confirm authorization of the administrative subpoena. The Attorney General must return the administrative subpoena with signature to SLED within forty‑eight hours after the Attorney General authorizes the administrative subpoena, or by the next business day, if the time period falls on a weekend or holiday, whichever is later.

 (4) The good faith reliance by the Attorney General as to the information affirmed by SLED to obtain an administrative subpoena constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena. The Attorney General is not responsible for any costs related to the defense of any civil, criminal, or administrative action arising out of the administrative subpoena.

 (E)(1) Upon receipt of an administrative subpoena from SLED, a financial institution, public or private utility, or communications provider shall disclose, as applicable, the subscriber’s or customer’s:

 (a) name;

 (b) address;

 (c) local and long distance telephone connection or electronic communication records, or records of session times and durations;

 (d) length of service, including the start date, and types of service utilized;

 (e) telephone or instrument number or other customer or subscriber number of identity, including any temporarily assigned network addresses; and

 (f) means and source of payment for such service, including any credit card or bank account numbers.

 (2) If a financial institution, public or private utility, or communications provider fails to obey an administrative subpoena without lawful excuse, SLED may apply to a circuit court having jurisdiction for an order compelling compliance. The financial institution, public or private utility, or communications provider may object to the administrative subpoena on the grounds that the administrative subpoena fails to comply with this section, or upon any constitutional or other legal right or privilege. The court may issue an order modifying or setting aside the administrative subpoena or directing compliance with the original administrative subpoena.

 (3) The good faith reliance by a financial institution, public or private utility, or communications provider to provide information to SLED pursuant to an administrative subpoena, constitutes a complete defense to any civil, criminal, or administrative action arising out of the administrative subpoena.

 (F) Information obtained by SLED pursuant to an administrative subpoena must not be made public and is not subject to the Freedom of Information Act.

 (G)(1) SLED is authorized to promulgate permanent regulations, pursuant to the Administrative Procedures Act in Chapter 23, Title 1, to define the procedures and guidelines needed to issue an administrative subpoena.

 (2) Pursuant to Section 1‑23‑130, SLED is authorized to promulgate emergency regulations to define the procedures and guidelines needed to issue an administrative subpoena until such time as permanent regulations are promulgated. The provisions of Section 1‑23‑130(A), (B), (D), and (E) are applicable to emergency regulations promulgated pursuant to this subitem. The provisions of Section 1‑23‑130(C) are not applicable to emergency regulations promulgated pursuant to this subitem. An emergency regulation promulgated pursuant to this subitem becomes effective upon issuance and continues for one year unless terminated sooner by SLED or concurrent resolution of the General Assembly.

 (H) An administrative subpoena must comply with the provisions of federal law 18 U.S.C. Section 2703(c)(2).

HISTORY: 2010 Act No. 271, Section 1, eff June 24, 2010.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 32, South Carolina Law Enforcement Division (SLED).

**SECTION 23‑3‑80.** Repealed by 2011 Act No. 69, Section 16, eff January 1, 2012.

Editor’s Note

Former Section 23‑3‑80 was entitled “Negotiation of memorandum of understanding with federal agency relating to unlawful aliens” and was derived from 2008 Act No. 280, Section 4.

**SECTION 23‑3‑85.** Confidential communications.

 (A) As used in this section:

 (1) “Client” means a public safety employee or a public safety employee’s immediate family.

 (2) “Immediate family” means the spouse, child, stepchild, parent, or stepparent.

 (3) “Peer‑support team” means any critical incident support service provider who has received training to provide emotional and moral support to a client involved in a critical incident, including, but not limited to, chaplains, mental health professionals, and public safety peers.

 (B) Notwithstanding any other provision of law, except as provided in subsection (C), communications between a client and any member of a peer‑support team, including other clients involved in the same peer‑support process, shall be confidential and privileged as provided by Section 19‑11‑95(B).

 (C) The confidentiality and privilege created by subsection (B) shall not apply when:

 (1) the disclosure is authorized by the client making the disclosure, or, if the client is deceased, the disclosure is authorized by the client’s executor, administrator, or in the case of unadministrated estates, the client’s next of kin. This provision only applies to statements made by the client;

 (2) the peer‑support team member was an initial responding officer, witness, or party to the critical incident;

 (3) the communication was made when the member of the peer‑support team was not performing official duties in the peer‑support process; or

 (4) the disclosure evidences a present threat to the client or to any other individual, or the disclosure constitutes an admission of a violation of state or federal law.

 (D) Notwithstanding any other provision of law, this section does not require the disclosure of any otherwise privileged communications and does not relieve any mandatory reporting requirements.

HISTORY: 2016 Act No. 234 (H.4878), Section 1, eff June 3, 2016.

ARTICLE 3

Criminal Information and Communication System

**SECTION 23‑3‑110.** Creation and functions of statewide criminal information and communication system.

 There is hereby established as a department within the State Law Enforcement Division a statewide criminal information and communication system, hereinafter referred to in this article as “the system,” with such functions as the Division may assign to it and with such authority, in addition to existing authority vested in the Division, as is prescribed in this article.

HISTORY: 1962 Code Section 53‑30; 1970 (56) 2415.

CROSS REFERENCES

Creation of the Missing Person Information Center as part of the State Law Enforcement Division, see Sections 23‑3‑200 et seq.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑115.** Fees for criminal record searches; charitable organizations; school districts.

 (A) The State Law Enforcement Division shall charge and collect a fee of twenty‑five dollars for each criminal record search conducted pursuant to regulations contained in Subarticle 1, Article 3, Chapter 73 of the Code of Regulations. All revenue generated up to an amount of four million four hundred sixty‑one thousand dollars collected from the criminal record search fee must be deposited to the general fund of the State; any revenue generated above this amount shall be collected, retained, expended, and carried forward by the State Law Enforcement Division for agency operations. The sale or dissemination of the criminal history record database maintained by the State Law Enforcement Division is prohibited. The individual sale of individual criminal history records by the State Law Enforcement Division is not affected. Notwithstanding any other provision of law, criminal history record information, including arrest history, may be disseminated in accordance with regulations regardless of whether a corresponding judicial finding or disposition is part of the record.

 (B) The fee allowed in subsection (A) is fixed at eight dollars if the criminal record search is conducted for a charitable organization, a bona fide mentor, or for the use of a charitable organization. An organization that is authorized to receive the reduced fee shall not charge the volunteer, mentor, member, or employee more than eight dollars or any additional fee that is not required by the State Law Enforcement Division. All criminal record searches conducted pursuant to this subsection must be for a volunteer, mentor, member, or employee performing in an official capacity of the organization and must not be resold. The division shall develop forms on which a mentor or charitable organization shall certify that the criminal record search is conducted for the use and benefit of the charitable organization or mentor. For purposes of this subsection, the phrase “charitable organization” means:

 (1) an organization which has been determined to be exempt from taxation under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended;

 (2) a bona fide church, including an institution such as a synagogue or mosque;

 (3) an organization which has filed a statement of registration or exemption under the Solicitation of Charitable Funds Act, Chapter 56, Title 33; or

 (4) local parks and recreation volunteers through a commission, municipality, county, or the South Carolina Department of Parks, Recreation and Tourism.

 (C) The fee allowed in subsection (A) is waived if the criminal record search is conducted on a substitute teacher on behalf of a school district.

HISTORY: 2000 Act No. 332, Section 1; 2008 Act No. 353, Section 2, Pt 19A, eff July 1, 2009; 2010 Act No. 168, Section 2, eff May 11, 2010; 2014 Act No. 187 (S.495), Section 1, eff June 2, 2014.

Effect of Amendment

The 2008 amendment rewrote this section.

The 2010 amendment added subsection (C) related to waiver of fee for criminal record search.

2014 Act No. 187, Section 1, in subsection (B), added the second and third sentences, and rewrote paragraph (4).

**SECTION 23‑3‑120.** Reports of criminal data and fingerprints by law‑enforcement agencies and court officials; taking of fingerprints.

 (A) All law enforcement agencies and court officials must report all criminal data and related information within their respective jurisdictions to the State Law Enforcement Division’s Central Record Repository at such times and in such form as the State Law Enforcement Division requires. This information must include criminal data and related information regarding juveniles charged with offenses pursuant to Section 63‑19‑2020.

 (B) A person subjected to a lawful custodial arrest for a state offense must be fingerprinted at the time the person is booked and processed into a jail or detention facility or other location when the taking of fingerprints is required. Fingerprints taken by a law enforcement agency or detention facility pursuant to this section must be submitted to the State Law Enforcement Division’s Central Record Repository within three days, excluding weekends and holidays, for the purposes of identifying record subjects and establishing criminal history record information.

 (C) The Department of Corrections and the Department of Probation, Parole and Pardon Services must submit the fingerprints of persons taken into custody to the State Law Enforcement Division’s Central Record Repository within three days after incarceration or intake, excluding weekends and holidays. Information concerning the probation segment of a criminal history record is not required if that information is established in the record.

HISTORY: 1962 Code Section 53‑31; 1970 (56) 2415; 1995 Act No. 7, Part I, Section 28; 2000 Act No. 396, Section 3; 2008 Act No. 413, Section 4.H, eff January 1, 2009.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 20‑7‑8510 in subsection (A) was changed to Section 63‑19‑2020 in accordance with 2008 Act No. 361 (Children’s Code).

Editor’s Note

2008 Act No. 413, Section 4.A provides as follows:

“This SECTION may be cited as the ‘South Carolina Protection from Violence Against Women and Children Act’.”

2008 Act No. 413, Section 4.I provides as follows:

“This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division’s receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23‑3‑620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23‑3‑640.”

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

Effect of Amendment

The 2008 amendment, in subsection (B), in the first sentence added the final clause starting with “at the time the person is booked.”

CROSS REFERENCES

Court’s duty to report convictions for violation of Section 34‑11‑60, see Section 34‑11‑95.

Reports of arrests made by use of uniform traffic ticket for offense committed in presence of law enforcement officer, see Section 56‑7‑15.

Requirement that every court clerk report the disposition of every case in the Court of General Sessions to the State Law Enforcement Division, see Section 14‑17‑325.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑130.** Determination of information to be supplied and methods of evaluation and dissemination; promulgation of rules and regulations.

 The State Law Enforcement Division is authorized to determine the specific information to be supplied by the law‑enforcement agencies and court officials pursuant to Section 23‑3‑120, and the methods by which such information shall be compiled, evaluated and disseminated. The State Law Enforcement Division is further authorized to promulgate rules and regulations to carry out the provisions of this article.

 The South Carolina Law Enforcement Division shall disseminate criminal history conviction records upon request to local school districts for prospective teachers and to the State Department of Social Services for personnel of child day care facilities. This service must be provided to the local school districts without charge.

HISTORY: 1962 Code Section 53‑32; 1970 (56) 2415; 1984 Act No. 512, Part II, Section 57B.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

Attorney General’s Opinions

Supreme Court decision concludes that each state may enact legislation authorizing disclosure of “rap sheets” to public; SLED’s regulation as to particular data to be disseminated is consistent with Court’s ruling and present South Carolina law; Supreme Court has concluded that “rap sheets” may continue to be treated as in the past by SLED, in accordance with SLED’s regulation; General Assembly could, consistent with Supreme Court ruling, specifically authorize by legislation disclosure of “rap sheets” to public. 1990 Op. Atty Gen No. 90‑15.

United States Supreme Court in Reporters Committee case construed federal law relative to criminal history records maintained by Federal Bureau of Investigation. 1990 Op. Atty Gen No. 90‑15.

Documents at original sources, such as arrest warrants, would not be affected by Supreme Court’s ruling and would be available to public. 1990 Op. Atty Gen No. 90‑15.

Decision to disclose particular record or document in given instance remains with custodian of document or record; such view constitutes a discussion of the ruling by the United States Supreme Court in Reporters Committee case and is not intended to usurp authority of custodian to determine whether disclosure is appropriate in particular instance. 1990 Op. Atty Gen No. 90‑15.

Section 23‑3‑130 is not sufficient authority for the regulations promulgated by the State Law‑Enforcement Division on December 10, 1976, insofar as they require fingerprint information of every person under lawful arrest, because this regulation amends and enlarges Section 23‑3‑40. 1976‑77 Op. Atty Gen, No. 77‑268, p 203.

**SECTION 23‑3‑140.** Effect of Article on disclosure of information.

 The provisions of this article shall not be construed to require or permit the disclosure or reporting of any information in the manner prohibited by existing law.

HISTORY: 1962 Code Section 53‑33; 1970 (56) 2415.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑150.** Grants and appropriations; contracts with public agencies.

 The State Law Enforcement Division is authorized to accept, on behalf of the State, and use in the establishment, expansion and improvement of the system, funds in the nature of grants or appropriations from the State, the United States, or any agency thereof, and may contract with any public agency for use of the system in the furtherance of effective law enforcement.

HISTORY: 1962 Code Section 53‑34; 1970 (56) 2415.

CROSS REFERENCES

Public finance generally, see Title 11.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑160.** Investigation of injury or death of person under twenty‑one when use of beverages containing alcohol suspected.

 In any accident involving injury or death of a person under the age of twenty‑one, where there is cause to believe that any beverage containing alcohol was consumed prior to the accident by the person under twenty‑one, the law enforcement agency having jurisdiction to investigate the accident shall commence a detailed investigation to determine the circumstances under which the beverage was obtained.

 Upon initiation of this investigation by the local investigating law enforcement agency, the South Carolina Law Enforcement Division shall assist in whatever capacity necessary to fully complete the inquiry and shall cooperate and assist in the prosecution of appropriate criminal charges against any person who provided a beverage containing alcohol to the person under twenty‑one.

HISTORY: 1987 Act No. 136, Section 1; 1993 Act No. 181, Section 342.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑170.** Investigation of traffic‑related injury or death of person where use of illegal drugs or controlled substances suspected.

 In any motor vehicle accident involving injury or death of a person where there is cause to believe that an illegal drug or controlled substance was used prior to the accident by any person involved therein, the law enforcement agency having jurisdiction to investigate the accident shall commence a detailed investigation to determine the circumstances under which the illegal drug or controlled substance was obtained.

 Upon initiation of this investigation by the local investigating law enforcement agency, the South Carolina Law Enforcement Division shall assist in whatever capacity necessary to fully complete the inquiry and shall cooperate and assist in the prosecution of appropriate criminal charges against any person who provided the illegal drug or controlled substance to that person.

HISTORY: 1987 Act No. 136, Section 2.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑175.** Inspection of junkyard, car dealership, parking lot, etc., for purpose of locating stolen vehicle or investigating titling or registration of wrecked or dismantled vehicle.

 The State Law Enforcement Division Vehicle Theft Unit is authorized to inspect a junkyard, scrap metal processing facility, salvage yard, repair shop, licensed business buying, selling, displaying, or trading new or used motor vehicles or parts of motor vehicles, parking lots, and public garages, or a person dealing with salvaged motor vehicles or parts of them.

 The physical inspection must be conducted while an employee or owner of the facility is present and must be for the purpose of locating stolen motor vehicles or investigating titling or registration of motor vehicles wrecked or dismantled.

HISTORY: 1999 Act No. 100, Part II, Section 47.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

ARTICLE 5

Missing Person Information Center

**SECTION 23‑3‑200.** Creation of Center; use of FBI file.

 There is created a Missing Person Information Center, hereinafter referred to as MPIC, to be located in Columbia as a part of the State Law Enforcement Division. The purpose of the MPIC is to serve as a central repository for information regarding missing persons and missing and exploited children, with special emphasis on missing children. The MPIC shall utilize the Federal Bureau of Investigation/National Crime Information Center’s missing person computerized file through the use of the State Law Enforcement Division’s law enforcement communications network. This center is hereinafter referred to as FBI/NCIC.

HISTORY: 1985 Act No. 98, Section 1.

Federal Aspects

Federal Bureau of Investigation generally, see 28 U.S.C.A. Sections 531 et seq.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

Attorney General’s Opinions

There are no provisions in Sections 23‑3‑200 et seq. which specifically authorize law enforcement officer to pick up child reported missing to Missing Person Information Center. 1985 Op. Atty Gen, No. 85‑126, p 341.

**SECTION 23‑3‑210.** Definitions.

 For the purposes of this article:

 (1) “Missing child” means any individual who is under the age of seventeen years whose temporary or permanent residence is in South Carolina, or is believed to be in South Carolina, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

 (2) “Missing person” means any individual who is seventeen years of age or older, whose temporary or permanent residence is in South Carolina, or is believed to be in South Carolina, whose location has not been determined, and who has been reported as missing to a law enforcement agency.

 (3) “Missing person report” is a report prepared on a prescribed form for transmitting information about a missing person or a missing child to a law enforcement agency.

 (4) “Exploited children” are children under the age of eighteen who are placed in positions where they were taken advantage of sexually because of their inability to cognitively assess or resist the contact or who were placed into these positions because of their dependency upon the offender.

HISTORY: 1985 Act No. 98, Section 2; 1990 Act No. 479, Section 1.

**SECTION 23‑3‑220.** Chief of State Law Enforcement Division, generally; employees.

 The MPIC is under the direction of the Chief of the State Law Enforcement Division and may be organized and structured in a manner as the Chief deems appropriate to ensure that the objectives of the MPIC are achieved. The Chief may employ those MPIC personnel as the General Assembly may authorize and provide funding for.

HISTORY: 1985 Act No. 98, Section 3.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑230.** Promulgation of regulations.

 The MPIC shall promulgate regulations prescribing:

 (a) procedures for accepting and disseminating information maintained at the MPIC;

 (b) the confidentiality of the data and information, including the missing person report, maintained by the MPIC;

 (c) the proper disposition of all obsolete data, including the missing person report; provided, data for an individual who has reached the age of eighteen and remains missing must be preserved;

 (d) procedures allowing a communication link with the State Law Enforcement Division and the FBI/NCIC’s missing person file to ensure compliance with FBI/NCIC policies;

 (e) forms, including but not limited to a missing person report, considered necessary for the efficient and proper operation of the MPIC.

HISTORY: 1985 Act No. 98, Section 4.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑240.** Submission of missing person reports to Center.

 Any parent, spouse, guardian, legal custodian, public or private agency or entity, or any person responsible for a missing person, may submit a missing person report to the MPIC on any missing child or missing person, regardless of the circumstances, after having first submitted a missing person report on the individual to the law enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing, regardless of the circumstances.

HISTORY: 1985 Act No. 98, Section 5; 2010 Act No. 192, Section 1, eff May 28, 2010.

Effect of Amendment

The 2010 amendment inserted “or any person responsible for a missing person”, and made other nonsubstantive changes.

CROSS REFERENCES

Provision that MPIC personnel shall instruct persons reporting the disappearance of an individual that they must submit report to local law enforcement agency, see Section 23‑3‑300.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑250.** Dissemination of missing persons data by law enforcement agencies.

 A law enforcement agency, upon receipt of a missing person report by a parent, spouse, guardian, legal custodian, public or private agency or entity, or any person responsible for a missing person, immediately shall make arrangements for the entry of data about the missing person or missing child into the national missing persons file in accordance with criteria set forth by the FBI/NCIC, inform all of the agency’s on‑duty law enforcement officers of the missing person report, initiate a statewide broadcast to all other law enforcement agencies to be on the lookout for the individual, contact the agency’s local media outlets when appropriate, and transmit a copy of the report to the MPIC.

HISTORY: 1985 Act No. 98, Section 6; 2010 Act No. 192, Section 2, eff May 28, 2010.

Effect of Amendment

The 2010 amendment inserted “or any person responsible for a missing person”, substituted “immediately shall make” for “shall immediately make”, deleted “immediately” before “inform all”, substituted “the agency’s” for “its”, inserted “contact the agency’s local media outlets when appropriate”, and made other nonsubstantive changes.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑260.** Responsibilities of Center.

 The MPIC shall:

 (a) Assist local law enforcement agencies with entering data about missing persons or missing children into the national missing persons file, ensure that proper entry criteria have been met as set forth by the FBI/NCIC, and confirm entry of the data about the missing persons or missing children.

 (b) Utilize both the intrastate communication network and the FBI/NCIC system in locating missing persons or missing children.

 (c) Collect, process, maintain, and disseminate information on missing and exploited children or missing persons.

 (d) Provide for a centralized distribution center for emergency flyers on missing persons or missing children.

 (e) Formulate and distribute, both intrastate and interstate, a monthly bulletin of missing persons and missing children from South Carolina to law enforcement agencies.

 (f) Develop, maintain, and disseminate a directory of resources available for assistance to local, state, and federal agencies and entities, public and private organizations, and others in locating a missing person or missing child.

 (g) Provide news media, including, but not limited to, television and radio stations and newspapers, with pertinent information on missing persons and missing children on a regularly scheduled basis.

 (h) Develop and disseminate recommended procedures and forms for the collection of identifying information, including but not limited to bloodtyping, fingerprinting, and dental charting, which are compatible with criteria established by the FBI/NCIC.

 (i) Maintain all available information on any missing person or missing child including, but not limited to, the missing person report, fingerprints, blood types, dental information, and photographs. The identifying information maintained at the MPIC must be kept confidential, except as may be otherwise provided in this article.

 (j) Conduct statewide training sessions and seminars relative to missing and exploited children and missing persons, including, but not limited to, methods to enhance the locating of missing children and missing persons and training regarding the operation of the MPIC.

 (k) In the case of locating an individual who had previously been reported as being a missing person or missing child, provide referrals for counseling or other assistance or aid to the individual or the individual’s family, if the individual or his family desires counseling or other assistance or aid.

 (l) Provide a program of support and technical assistance for community‑based efforts, especially in the case of children, to prevent disappearances and to ensure self‑protection.

HISTORY: 1985 Act No. 98, Section 7.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑270.** Notification requirements when missing person located.

 Any parent, spouse, guardian, legal custodian, public or private agency or entity, or any person responsible for a missing person, who submits a missing person report to a law enforcement agency or to the MPIC, after having first submitted the missing person report to the appropriate law enforcement agency, immediately shall notify the law enforcement agency and the MPIC of any individual whose location has been determined. The MPIC shall instigate and confirm the deletion of the individual’s records from the FBI/NCIC’s missing person file, as long as there are no grounds for criminal prosecution, and follow up with the local law enforcement agency having jurisdiction of the records.

HISTORY: 1985 Act No. 98, Section 8; 2010 Act No. 192, Section 3, eff May 28, 2010.

Effect of Amendment

The 2010 amendment inserted “or any person responsible for a missing person”, substituted “immediately shall notify” for “shall immediately notify”, and made other nonsubstantive changes.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑280.** Release of information.

 The following may make inquiries of, and receive data or information from, the MPIC:

 (a) Any police, law enforcement, or criminal justice agency investigating a report of a missing or unidentified person or child, whether living or deceased.

 (b) A court, upon a finding by the court that access to the data, information, or records of the MPIC may be necessary for the determination of an issue before the court.

 (c) Any solicitor of a judicial circuit in this State or the solicitor’s designee or representative.

 (d) Any person engaged in bona fide research when approved by the Chief; provided, no names or addresses may be supplied to this person.

HISTORY: 1985 Act No. 98, Section 9.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑290.** Fees.

 The MPIC may not charge any fee for inquiries made to it pursuant to this article.

HISTORY: 1985 Act No. 98, Section 10.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑300.** Toll‑free phone line; instructions to callers; communication with law enforcement agencies.

 The MPIC shall provide a toll‑free telephone line for anyone to report the disappearance of any individual or the sighting of any missing child or missing person. MPIC personnel shall instruct the caller, in the case of a report concerning the disappearance of an individual, of the requirements contained in Section 23‑3‑240 of first having to submit a missing person report on the individual to the law enforcement agency having jurisdiction of the area in which the individual became or is believed to have become missing. Any law enforcement agency may retrieve information imparted to the MPIC by means of this phone line. The MPIC must directly communicate any report of a sighting of a missing person or a missing child to the law enforcement agency having jurisdiction in the area of disappearance or sighting.

HISTORY: 1985 Act No. 98, Section 11.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑310.** Improper release of information; penalty.

 Any person who knowingly and wilfully releases, or authorizes the release of, any data, information, or records maintained or possessed by the MPIC to any agency, entity, or person other than as specifically permitted by this article or in violation of any regulation promulgated by the MPIC is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not less than five hundred dollars nor more than one thousand dollars or by imprisonment of not less than thirty days nor more than ninety days, or both.

HISTORY: 1985 Act No. 98, Section 12.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑320.** Missing Person Task Force.

 There is created a Missing Person Task Force composed of five members appointed by the Governor. The Governor shall designate a member as chairman. The Task Force shall study information gathered from the MPIC and the FBI/NCIC in order to make long‑range plans concerning the gathering, maintaining, and processing of information and data on missing persons and missing children, concerning the effectiveness of efforts to determine the whereabouts of missing persons and missing children through the efforts of the MPIC, and concerning related matters. The Task Force shall submit a written report of its findings and recommendations to the Governor, the Attorney General, and the Joint Legislative Committee on Children on or before July 1, 1986. After submission of this report, the Missing Person Task Force is dissolved. The Task Force may meet as frequently as its chairman or a majority of its members considers necessary. Members of the Task Force are allowed the usual mileage, per diem, and subsistence as provided by law for members of state boards, committees, and commissions.

HISTORY: 1985 Act No. 98, Section 13.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

**SECTION 23‑3‑330.** Endangered Person Notification System.

 (A) The Endangered Person Notification System is established within the Missing Person Information Center. The purpose of the Endangered Person Notification System is to provide a statewide system for the rapid dissemination of information regarding a missing person who is believed to be suffering from dementia or some other cognitive impairment.

 (B) If the center receives a report that involves a missing person who is believed to be suffering from dementia or some other cognitive impairment, for the protection of the person from potential abuse or other physical harm, neglect, or exploitation, the center shall issue a notification providing for the appropriate dissemination of information regarding the person.

 (C) The center shall adopt guidelines and develop procedures for issuing notifications for missing persons believed to be suffering from dementia or some other cognitive impairment, provide education and training to local law enforcement agencies, and encourage radio and television broadcasters to participate in the notifications.

 (D) The center shall consult with the Department of Transportation and develop a procedure for the use of overhead permanent changeable message signs to provide information on a missing person who is believed to be suffering from dementia or some other cognitive impairment when the person’s vehicle and license tag information is available. The Department of Transportation shall utilize current protocol for the content, length, and frequency of any message to be placed on an overhead permanent changeable message sign.

HISTORY: 2010 Act No. 192, Section 4, eff May 28, 2010.

ARTICLE 7

Sex Offender Registry

CROSS REFERENCES

Compliance with this article by sexually violent predators, see Section 44‑48‑160.

**SECTION 23‑3‑400.** Purpose.

 The intent of this article is to promote the state’s fundamental right to provide for the public health, welfare, and safety of its citizens. Notwithstanding this legitimate state purpose, these provisions are not intended to violate the guaranteed constitutional rights of those who have violated our nation’s laws.

 The sex offender registry will provide law enforcement with the tools needed in investigating criminal offenses. Statistics show that sex offenders often pose a high risk of re‑offending. Additionally, law enforcement’s efforts to protect communities, conduct investigations, and apprehend offenders who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency’s jurisdiction.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

ALR Library

93 ALR 6th 1 , Validity of State Sex Offender Registration Laws Under Equal Protection Guarantees.

LAW REVIEW AND JOURNAL COMMENTARIES

Note, Duty to warn and public notification of the release of sex offenders, 49 S.C. L. Rev. 1131, Summer 1998.

NOTES OF DECISIONS

In general 1

1. In general

Juvenile adjudicated delinquent for first‑degree criminal sexual conduct with minor, committed when juvenile was 15 years old, did not have constitutionally protected liberty or property interest in his reputation that precluded public’s access to sex offender registry information. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Constitutional Law 4348; Infants 3204

State’s sex offender registration and electronic monitoring statutory regime was intended as a civil scheme for the protection of the public, not as punishment. In re Justin B. (S.C. 2013) 405 S.C. 391, 747 S.E.2d 774, certiorari denied 134 S.Ct. 1496, 188 L.Ed.2d 380. Mental Health 433(2)

State’s failure to notify defendant of the new bi‑annual registration requirements when Sex Offender Registry Act was amended did not violate the due process rights of defendant who was convicted of failure to register as a sex offender; Act was a statewide registration program, registration requirement was directed at a narrow class of defendants rather than all felons, Act was specifically enacted as a public safety measure based on the legislature’s determination that convicted sex offenders posed an unacceptable risk to the general public once released from incarceration, and had the legislature intended to notify defendant of the need to register bi‑annually, legislature could have included such language in the Act. State v. Latimore (S.C.App. 2010) 390 S.C. 88, 700 S.E.2d 456, certiorari granted, affirmed as modified 397 S.C. 9, 723 S.E.2d 589. Constitutional Law 4509(1); Mental Health 469.5

The South Carolina Sex Offender Registry Act was created to be a non‑punitive act. Williams v. State (S.C.App. 2008) 378 S.C. 511, 662 S.E.2d 615. Mental Health 469(1)

Registration on the sexual offender registry is not intended to punish sex offenders, but rather the purpose of requiring registration is to protect the public from those sex offenders who may re‑offend and to aid law enforcement in solving sex crimes. Williams v. State (S.C.App. 2008) 378 S.C. 511, 662 S.E.2d 615. Mental Health 469(1)

**SECTION 23‑3‑410.** Registry; contents and purpose; cross‑reference alias names.

 (A) The registry is under the direction of the Chief of the State Law Enforcement Division (SLED) and shall contain information the chief considers necessary to assist law enforcement in the location of persons convicted of certain offenses. SLED shall develop and operate the registry to: collect, analyze, and maintain information; make information available to every enforcement agency in this State and in other states; and establish a security system to ensure that only authorized persons may gain access to information gathered under this article.

 (B) SLED shall include and cross‑reference alias names in the registry.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1; 2005 Act No. 141, Section 1.

CROSS REFERENCES

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

United States Supreme Court Annotations

Sex offenders, Sex Offender Registration and Notification Act’s registration requirements do not apply to pre‑Act offenders until the Attorney General specifies that they do apply, see Reynolds v. U.S., 2012, 132 S.Ct. 975, 565 U.S. 432, 181 L.Ed.2d 935, on remand 710 F.3d 498. Mental Health 433(2)

**SECTION 23‑3‑420.** Promulgation of regulations.

 The State Law Enforcement Division shall promulgate regulations to implement the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1.

CROSS REFERENCES

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑430.** Sex offender registry; convictions and not guilty by reason of insanity findings requiring registration.

 (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) 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 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).

 (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.

 (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.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1; 1999 Act No. 74, Section 1; 2000 Act No. 363, Section 2; 2004 Act No. 208, Section 14; 2005 Act No. 141, Section 2; 2008 Act No. 335, Section 16, eff June 16, 2008; 2010 Act No. 212, Section 3, eff June 7, 2010; 2010 Act No. 289, Section 8, eff June 11, 2010; 2012 Act No. 255, Section 5, eff June 18, 2012; 2015 Act No. 7 (S.196), Section 6.D, eff April 2, 2015.

Code Commissioner’s Note

At the direction of the Code Commissioner, the two 2010 amendments to subsection (C) were read together.

Effect of Amendment

The 2008 amendment, in subsections (F) and (G), in the introductory paragraph added “must reregister as provided by Section 23‑3‑460”.

The first 2010 amendment, 2010 Act No. 212, Section 3, added subsection (C)(23) relating to the federal Sex Offender Registration and Notification Act; and made nonsubstantive changes.

The second 2010 amendment, 2010 Act No. 289, Section 8, inserted paragraph (C)(17) and redesignated paragraphs (C)(17) to (C)(21) as paragraphs (C)(18) to (C)(22).

The 2012 amendment in subsection (C), in item (4), substituted “16‑3‑655(A)” for “16‑3‑655(1)”; in item (5), added “(16‑3‑655(B))” and substituted “16‑3‑655(B)(2)” for “16‑3‑655(3)”; added item (6) relating to criminal sexual conduct with minors in the third degree; deleted former item (11) relating to committing or attempting lewd act upon child under 16; renumbered former items (7) through (10) as (8) through (11); and made other nonsubstantive changes.

2015 Act No. 7, Section 6.D, in (C)(17), substituted “16‑3‑2020” for 16‑3‑930”.

CROSS REFERENCES

Court‑ordered psychiatric or psychological treatment for children adjudicated for certain sex offenses listed in this section, see Section 23‑3‑500.

Electronic monitoring, reporting damage to or removing monitoring device, penalty, see Section 23‑3‑540.

Management, administration, and staffing, regulations for the licensing of child care centers, see S.C. Code of Regulations R. 114‑503.

Nursing home or community residential care facility licensure, fingerprint‑based criminal records check requirement, see Section 44‑7‑264.

Permanent restraining orders, criminal offence defined, see Section 16‑3‑1900.

School district criminal record searches and National Sex Offender Registry checks, see Section 59‑19‑117.

Federal Aspects

For the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006, see 42 U.S.C.A. Section 16901 et seq.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

ALR Library

77 ALR 6th 197 , Removal of Adults from State Sex Offender Registries.

34 ALR 6th 171 , Validity, Construction, and Application of State Statutory Requirement that Person Convicted of Sexual Offense in Other Jurisdiction Register or be Classified as Sexual Offender in Forum State.

37 ALR 6th 55 , State Statutes or Ordinances Requiring Persons Previously Convicted of Crime to Register With Authorities as Applied to Juvenile Offenders‑Constitutional Issues.

Encyclopedias

14 Am. Jur. Trials 619, Juvenile Court Proceedings.

S.C. Jur. Assault and Battery Section 16, Sentence for ABHAN.

S.C. Jur. Constitutional Law Section 72, Life and Liberty Rights.

S.C. Jur. Constitutional Law Section 80, Criminal Proceedings.

S.C. Jur. Criminal Sexual Conduct Section 2, All Degrees.

S.C. Jur. Criminal Sexual Conduct Section 17.50, Offender.

United States Supreme Court Annotations

Sex offenders, North Carolina law barring registered sex offenders from accessing commercial social networking websites violated First Amendment, see Packingham v. North Carolina, 2017, 137 S.Ct. 1730, 198 L.Ed.2d 273. Constitutional Law 2260; Mental Health 433(2)

Attorney General’s Opinions

Although a sex offender pardoned before the 2005 and 2008 amendments to Section 23‑3‑430 is relieved of the requirements that he or she be placed on the sex offender registry and reregister biannually, this does not require that the pardoned sex offender’s information be removed from the sex offender registry. S.C. Op.Atty.Gen. (August 2, 2013) 2013 WL 4397080.

It is likely that a person convicted of false imprisonment or kidnapping in North Carolina would likely be required to register as a sex offender in South Carolina. S.C. Op.Atty.Gen. (January 14, 2013) 2013 WL 391721.

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1. Validity; equal protection

Statute requiring defendant to register as a sex offender in South Carolina based on offense committed in Colorado, which offense, if committed in South Carolina would not have triggered registry requirement, did not violate defendant’s right to equal protection, even though registry listed offense different than that for which defendant was convicted; classification was reasonably related to legitimate state purpose of protecting public and aiding law enforcement, all persons who were required to register were subject to uniform administrative and legal procedures, and Colorado deemed defendant sex offender and South Carolina gave comity to Colorado’s adjudication, such that statute reasonably protected South Carolina residents. Hendrix v. Taylor (S.C. 2003) 353 S.C. 542, 579 S.E.2d 320. Constitutional Law 3176; Mental Health 433(2)

Supreme Court applied rational relationship test in determining whether South Carolina statute requiring defendant to register on sex offender registry based on offense committed in Colorado violated defendant’s right to equal protection, where classification did not affect a fundamental right. Hendrix v. Taylor (S.C. 2003) 353 S.C. 542, 579 S.E.2d 320. Constitutional Law 3176

A classification as a sex offender does not violate the equal protection clause if: (1) the classification bears a reasonable relation to the legislative purpose sought to be effected; (2) the members of the class are treated alike under similar circumstances and conditions; and (3) the classification rests on some reasonable basis. Hendrix v. Taylor (S.C. 2003) 353 S.C. 542, 579 S.E.2d 320. Constitutional Law 3174

2. Validity; due process

Even if juvenile’s reputation were protected liberty interest, there was no undue harm to juvenile’s reputation in requiring him to register as sex offender after having been adjudicated delinquent for committing first degree criminal sexual conduct with a minor (CSCM), since registry information would not be made available to public because of juvenile’s age at time of adjudication. In re Ronnie A. (S.C. 2003) 355 S.C. 407, 585 S.E.2d 311. Constitutional Law 4348; Infants 1006(17); Infants 3188; Infants 3204

The registration of offenders, including juveniles who have proved themselves capable of certain sex offenses, does not violate due process; registration is rationally related to achieving legitimate objective of protecting public from those offenders who may re‑offend. In re Ronnie A. (S.C. 2003) 355 S.C. 407, 585 S.E.2d 311. Constitutional Law 4343; Constitutional Law 4348; Infants 3204; Mental Health 433(2)

Juvenile’s due process rights were not violated by requirement that he register as sex offender after having been adjudicated delinquent for committing first degree criminal sexual conduct with a minor (CSCM); no liberty interest was implicated in sex‑offender registration requirement, regardless of length of time, since requirement was non‑punitive, and juvenile offered no valid basis upon which to distinguish juvenile from adult sex offenders for purposes of due process. In re Ronnie A. (S.C. 2003) 355 S.C. 407, 585 S.E.2d 311. Constitutional Law 4348; Infants 1006(17)

2.5. Retroactive application

Amendments to the sex offender registry statute to provide that if a sex offender received a pardon for which he was required to register, he must reregister and may not be removed from the registry except in certain enumerated circumstances were not remedial or procedural, and, thus, could not be applied retroactively to sex offender, whose pardon on his convictions for two counts of “peeping Tom” offenses, relieved him from placement on the sex offender registry and continuous compliance with its registration requirements; statute did not prevent sex offender’s removal from sex offender registry at the time of his pardon, but its amendments, if applied retroactively, would require him to remain on registry, and amendments did not provide a procedure for a court to follow, or prescribe a method for enforcing rights. Edwards v. State Law Enforcement Div. (S.C. 2011) 395 S.C. 571, 720 S.E.2d 462. Mental Health 433(2)

Amendments to the sex offender registry statute to provide that if a sex offender received a pardon for which he was required to register, he must reregister and may not be removed from the registry except in certain enumerated circumstances changed, rather, than clarified the law, for purposes of determining whether amendments applied retroactively to sex offender, who had been pardoned on his two “peeping Tom” convictions and sought to be relieved from statutory sex offender registration requirements, as these amendments occurred substantive to the pardon statute, ensuring that the broad application of the pardon statute would not relieve sex offenders of their registration obligation. Edwards v. State Law Enforcement Div. (S.C. 2011) 395 S.C. 571, 720 S.E.2d 462. Mental Health 433(2)

3. In general

The applicable statute for determining whether a person must register as a sex offender is the statute that exists at the time of that person’s release from prison. Thompson v. State (S.C.App. 2014) 409 S.C. 386, 762 S.E.2d 51, rehearing denied, certiorari granted, affirmed in part, reversed in part 415 S.C. 560, 785 S.E.2d 189. Mental Health 454

North Carolina offense of indecent liberties between children, which juvenile was adjudicated delinquent for committing, was not the equivalent of the South Carolina offense of lewd act upon a child under sixteen, and thus juvenile’s name could not be placed on the South Carolina Sex Offender Registry; the North Carolina offense of indecent liberties between children targeted acts between children, was required to involve a child who was at least three years younger than the defendant, and was punishable as a class one misdemeanor, and the South Carolina lewd act upon a child offense applied to adults and was punishable as a felony. (Per Beatty, J., with one judge concurring and one judge concurring in the result.) In re Shaquille O’Neal B. (S.C. 2009) 385 S.C. 243, 684 S.E.2d 549. Infants 3204

The fact that juvenile was not required to register as a sex offender in North Carolina after he was adjudicated delinquent in that state for committing the offense of indecent liberties between children did not preclude South Carolina from requiring juvenile to register as a sex offender in that state; the South Carolina Sex Offender Registry required registration when a person was convicted of an offense in another state that was similar to a South Carolina offense that required registration, and there was no requirement that the offense be one that was registry‑eligible in the state where the offense occurred. (Per Beatty, J., with one judge concurring and one judge concurring in the result.) In re Shaquille O’Neal B. (S.C. 2009) 385 S.C. 243, 684 S.E.2d 549. Infants 3204

Defendant’s kidnapping offense did not include a criminal sexual offense or attempted criminal sexual offense, and thus, defendant was not required to register as a sex offender; no finding as to whether offense included sexual element was made on record because amendment recognizing exception did not exist at time of conviction, but record was clear that no sexual misconduct was involved in the kidnapping. Hazel v. State (S.C. 2008) 377 S.C. 60, 659 S.E.2d 137. Mental Health 469(2)

Presiding judge cannot sua sponte place a person in sex offender registry for a crime that is not specifically listed in the sex offender statute as an offense requiring placement in the registry. State v. Davis (S.C.App. 2007) 375 S.C. 12, 649 S.E.2d 178. Mental Health 469(4)

The intent of the legislature in enacting the sex offender registry law is to protect the public from those offenders who may re‑offend. In re Ronnie A. (S.C. 2003) 355 S.C. 407, 585 S.E.2d 311. Mental Health 469(1)

4. Jurisdiction

Court of Common Pleas had jurisdiction to make finding as to whether petitioner’s kidnapping offense for which he was convicted involved sexual misconduct as to require him to register as a sex offender, where issue was raised not in General Sessions court but in the Court of Common Pleas, in a petition for declaratory judgment, which was thus subject to Declaratory Judgment Act, and registration statute was a civil statute. Hazel v. State (S.C. 2008) 377 S.C. 60, 659 S.E.2d 137. Declaratory Judgment 273

5. Good cause

Good cause existed for sentencing court to order defendant convicted of assault and battery of a high and aggravated nature to register as a sex offender; defendant had had sex with 14‑year‑old victim, knew where victim lived, had made confrontational gestures towards victim’s father, and lived within a half‑mile of many girls similar in age to victim. State v. Hicks (S.C.App. 2008) 377 S.C. 322, 659 S.E.2d 499. Mental Health 469(2)

6. Indecent exposure

Amendment to the sex offender registration statute, which operated to include a person convicted of indecent exposure in the annual registration requirements only upon a court’s specific finding that such a person should register as a sex offender, was procedural or remedial in nature, and thus, applied retroactively such that indecent exposure offender was entitled to a hearing in order to determine whether he was required to continue to register as sex offender. Wiesart v. Stewart (S.C.App. 2008) 379 S.C. 300, 665 S.E.2d 187, rehearing denied, certiorari denied. Mental Health 433(2)

7. Foreign convictions

Petitioner’s conviction in Pennsylvania for unlawful restraint was sufficiently similar to conviction in South Carolina for kidnapping as to require petitioner to register as a sex offender in South Carolina; South Carolina sex offender registration statute required registration for kidnapping conviction, and Pennsylvania unlawful restraint statute and South Carolina kidnapping statute had similar public policy goals proscribed the same conduct. Lozada v. South Carolina Law Enforcement Div. (S.C. 2011) 395 S.C. 509, 719 S.E.2d 258, rehearing denied. Mental Health 469(2)

7.5. Juvenile offenders

Juvenile sex offender’s assertion that mandatory lifetime sex offender registration and electronic monitoring conflicted with purposes of Children’s Code by treating juveniles same as adult offenders was not proper basis for striking lifetime registration requirement for juvenile adjudicated delinquent for first‑degree criminal sexual conduct with minor; fact that sex offender registration requirements treated juveniles same as adults was prerogative of Legislature, as sex offender registration served State’s goal of protecting children, who were often victims of sex crimes, and to aid law enforcement. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Infants 3204

State’s parens patriae duty to protect children was not basis for striking mandatory lifetime sex offender registration and electronic monitoring requirements on juvenile sex offender adjudicated delinquent for first‑degree criminal sexual conduct with minor; policy behind doctrine of parens patriae presented question for Legislature, not the courts, and in any case, sex offender registration and electronic monitoring requirements was consistent with State’s duty to protect children who were often victims of sexual assault. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Infants 3204

Mandatory lifetime sex offender registration and electronic monitoring was not cruel and unusual punishment as applied to juvenile offender adjudicated delinquent for first‑degree criminal sexual conduct with minor; sex offender registry was non‑punitive, purpose of sex offender registry had nothing to do with retribution, but instead served goals of protecting public and aiding law enforcement, lifetime registration was rationally related to those goals, and any deterrent effect of registration derived from availability of information, not from punishment. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Infants 3204; Sentencing and Punishment 1601; Sentencing and Punishment 1607

8. Effect of pardon

State’s pardon of sex offender with respect to his convictions for two counts of “peeping Tom” offenses, relieved him from all direct and collateral consequences of his pardoned crimes, including placement on the sex offender registry and continuous compliance with its registration requirements. Edwards v. State Law Enforcement Div. (S.C. 2011) 720 S.E.2d 462. Mental Health 469(2)

9. Removal from list, generally

Sex offender was not entitled to removal of his name from the sex offender registry; sex offender did not qualify, under any of the methods set forth in statute, for removal of his name from the registry. Johnson v. Lloyd (S.C.App. 2012) 399 S.C. 470, 732 S.E.2d 198, rehearing denied, certiorari granted, reversed 407 S.C. 610, 757 S.E.2d 705. Mental Health 469(2)

10. Justiciability

Inmate, who sought declaratory judgment that his kidnapping convictions would not require him to register as a sex offender, asserting convictions did not include a criminal sexual offense, failed to present a justiciable controversy; current statutes requiring registration did not contemplate that inmate would register until he was released from prison, and it was unknown whether inmate would be required to register, as the applicable statute for determining whether inmate had to register would be that in existence at the time of his release from prison. section 23‑3‑430(C)(15). Thompson v. State (S.C. 2016) 415 S.C. 560, 785 S.E.2d 189. Declaratory Judgment 84

Inmate, who sought declaratory judgment that his kidnapping convictions did not include a criminal sexual offense and would not require him to register as a sex offender, failed to present a justiciable controversy; current statutes requiring registration did not contemplate that inmate would register until he was released from prison, and it was unknown whether inmate would be required to register, as the applicable statute for determining whether inmate had to register would be that in existence at the time of his release from prison. Thompson v. State (S.C.App. 2014) 409 S.C. 386, 762 S.E.2d 51, rehearing denied, certiorari granted, affirmed in part, reversed in part 415 S.C. 560, 785 S.E.2d 189. Declaratory Judgment 81

11. Review

Inmate, who sought declaratory judgment that his kidnapping convictions did not include a criminal sexual offense and would not require him to register as a sex offender, had been denied a meaningful opportunity to be heard on whether his kidnapping offenses were sexual in nature, by circuit court’s and court of appeals’ failing to address the first declaration in their respective order and opinion, and only addressing inmate’s second declaration, warranting remand. Section 23‑3‑430. Thompson v. State (S.C. 2016) 415 S.C. 560, 785 S.E.2d 189. Declaratory Judgment 84; Declaratory Judgment 395; Mental Health 433(2)

**SECTION 23‑3‑440.** Notification of sheriff of offender’s release, probation or change of residence; juvenile offenders.

 (1) Before an offender’s release from the Department of Corrections after completion of the term of imprisonment, from the Department of Juvenile Justice after completion of the term of confinement, or being placed on parole, SLED, based upon information provided by the Department of Corrections, the Department of Juvenile Justice, the Juvenile Parole Board, or the Department of Probation, Parole and Pardon Services, shall notify the sheriff of the county where the offender intends to reside that the offender is being released and has provided an address within the jurisdiction of the sheriff for that county. The Department of Corrections, the Department of Juvenile Justice, the Juvenile Parole Board, and the Department of Probation, Parole and Pardon Services shall provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside within one business day of his release. Further, the Department of Corrections, the Department of Juvenile Justice, and the Juvenile Parole Board shall obtain descriptive information of the offender, including a current photograph prior to release. The offender’s photograph must be provided to SLED before he is released.

 (2) Based upon information provided by the Department of Probation, Parole and Pardon Services, SLED shall notify the sheriff of the county where an offender is residing when the offender is sentenced to probation or is a new resident of the State who must be supervised by the department. The Department of Probation, Parole and Pardon Services also shall provide verbal and written notification to the offender that he must register with the sheriff of the county in which he intends to reside. An offender who is sentenced to probation must register within one business day of sentencing. Further, the Department of Probation, Parole and Pardon Services shall obtain descriptive information of the offender, including a current photograph that is to be updated annually prior to expiration of the probation sentence.

 (3) Based upon information provided by the Department of Juvenile Justice, or the Juvenile Parole Board SLED shall notify the sheriff of the county where an offender is residing when the offender is released from a Department of Juvenile Justice facility or the Juvenile Parole Board, or when the Department of Juvenile Justice or the Juvenile Parole Board is required to supervise the actions of the juvenile. The Department of Juvenile Justice or the Juvenile Parole Board must provide verbal and written notification to the juvenile and his parent, legal guardian, or custodian that the juvenile must register with the sheriff of the county in which the juvenile resides. The juvenile must register within one business day of his release. The parents or legal guardian of a person under seventeen years of age who is required to register under this chapter must ensure that the person has registered.

 (4) The Department of Corrections, the Department of Probation, Parole and Pardon Services, and the Department of Juvenile Justice shall provide to SLED the initial registry information regarding the offender prior to his release from imprisonment or relief of supervision. This information shall be collected in the event the offender fails to register with his county sheriff.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1; 2005 Act No. 141, Section 3.

CROSS REFERENCES

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

ALR Library

63 ALR 6th 351 , Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions.

Encyclopedias

S.C. Jur. Constitutional Law Section 102, Constitutionality of Ex Post Facto Laws.

S.C. Jur. Constitutional Law Section 103, Retroactive Laws that Are Not Ex Post Facto.

NOTES OF DECISIONS

In general 1

1. In general

Sex Offender Registry Act did not violate ex post facto clause when defendant was required to register as sex offender 25 years after he had committed the offense; the Act was a civil statute rather than a criminal penalty, in that Act was not intended to punish sex offenders but to protect the public from those sex offenders who may re‑offend and to aid law enforcement in solving sex crimes. State v. Walls (S.C. 2002) 348 S.C. 26, 558 S.E.2d 524.

**SECTION 23‑3‑450.** Offender registration with sheriff; sheriff’s notification of local law enforcement agencies.

 The offender shall register with the sheriff of each county in which he resides, owns real property, is employed, 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. To register, the offender must provide information as prescribed by SLED. The sheriff in the county in which the offender resides, owns real property, is employed, or attends, is enrolled, volunteers, interns, or carries on a vocation at any public or private school shall forward all required registration information to SLED within three business days. A copy of this information must be kept by the sheriff’s department. The county sheriff shall ensure that all information required by SLED is secured and shall establish specific times of the day during which an offender may register. An offender shall not be considered to have registered until all information prescribed by SLED has been provided to the sheriff. The sheriff in the county in which the offender resides, owns real property, is employed, or attends, is enrolled, volunteers, interns, or carries on a vocation at any public or private school shall notify all local law enforcement agencies, including college or university law enforcement agencies, within three business days of an offender who resides, owns real property, is employed, or attends, is enrolled, volunteers, interns, or carries on a vocation at any public or private school within the local law enforcement agency’s jurisdiction.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1; 2005 Act No. 141, Section 4; 2010 Act No. 212, Section 4, eff June 7, 2010.

Effect of Amendment

The 2010 amendment rewrote this section.

CROSS REFERENCES

State Law Enforcement Division, see Sections 23‑3‑10 et seq.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

ALR Library

63 ALR 6th 351 , Validity of State Sex Offender Registration Laws Under Ex Post Facto Prohibitions.

Encyclopedias

S.C. Jur. Constitutional Law Section 102, Constitutionality of Ex Post Facto Laws.

S.C. Jur. Constitutional Law Section 103, Retroactive Laws that Are Not Ex Post Facto.

S.C. Jur. Criminal Sexual Conduct Section 2, All Degrees.

Attorney General’s Opinions

Local police departments have the authority to visit residences of sexual offenders during reasonable hours to ensure that they are living at the residence reported on the registry. S.C. Op.Atty.Gen. (March 30, 2011) 2011 WL 1444727.

NOTES OF DECISIONS

In general 1

1. In general

Sex Offender Registry Act did not violate ex post facto clause when defendant was required to register as sex offender 25 years after he had committed the offense; the Act was a civil statute rather than a criminal penalty, in that Act was not intended to punish sex offenders but to protect the public from those sex offenders who may re‑offend and to aid law enforcement in solving sex crimes. State v. Walls (S.C. 2002) 348 S.C. 26, 558 S.E.2d 524.

**SECTION 23‑3‑460.** Bi‑annual registration for life; notification of change of address; notification of local law enforcement agencies.

 (A) A person required to register pursuant to this article is required to register biannually for life. 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.

 (B) A person classified as a Tier III offender 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), is required to register every ninety days.

 (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 or attending the public or private school.

 (D) If a person required to register pursuant to this article changes his permanent or temporary address into another county in South Carolina, the person must register with the county sheriff in the new county within three business days of establishing the new residence. The person also must provide written notice within three business days of the change of address in the previous county to the sheriff with whom the person last registered. For purposes of this subsection, “temporary address” or “residence” means the location of the individual’s home or other place where the person habitually lives or resides, or where the person lives or resides for a period of ten or more consecutive days. For purposes of this subsection, “habitually lives or resides” means locations at which the person lives with some regularity.

 (E) A person required to register pursuant to this article and who is employed by, attends, is enrolled, volunteers, interns, or carries on a vocation at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school, must provide written notice within three business days of each change in attendance, enrollment, volunteer status, intern status, employment, or vocation status at any public or private school in this State. For purposes of this subsection, “employed and carries on a vocation” means employment that is full time or part time for a period of time exceeding fourteen days or for an aggregate period of time exceeding thirty days during a calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit; and “student” means a person who is enrolled on a full‑time or part‑time basis, in a public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and a vocational, technical, or occupational school.

 (F) If a person required to register pursuant to this article moves outside of South Carolina, the person must provide written notice within three business days of the change of address to a new state to the county sheriff with whom the person last registered.

 (G) A person required to register pursuant to this article who moves to South Carolina from another state establishes residence, acquires real property, is employed in, or attends, is enrolled, volunteers, interns, is employed by, or carries on a vocation at a public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and a vocational, technical, or occupational school in South Carolina, and is not under the jurisdiction of the Department of Corrections, the Department of Probation, Parole and Pardon Services, the Department of Juvenile Justice, or the Juvenile Parole Board at the time of moving to South Carolina must register within three business days of establishing residence, acquiring real property, gaining employment, attending or enrolling, volunteering or interning, being employed by, or carrying on a vocation at a public or private school in this State.

 (H) The sheriff of the county in which the person resides must forward all changes to any information provided by a person required to register pursuant to this article to SLED within three business days.

 (I) A sheriff who receives registration information, notification of change of permanent or temporary address, or notification of change in employment, or attendance, enrollment, employment, volunteer status, intern status, or vocation status at a public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and a vocational, technical, or occupational school, must notify all local law enforcement agencies, including college or university law enforcement agencies, within three business days of an offender whose permanent or temporary address, real property, or public or private school is within the local law enforcement agency’s jurisdiction.

 (J) The South Carolina Department of Motor Vehicles, shall inform, in writing, any new resident who applies for a driver’s license, chauffeur’s license, vehicle tag, or state identification card of the obligation of sex offenders to register. The department also shall inform, in writing, a person renewing a driver’s license, chauffeur’s license, vehicle tag, or state identification card of the requirement for sex offenders to register.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1; 2001 Act No. 107, Section 4; 2002 Act No. 310, Section 3; 2005 Act No. 141, Section 5; 2006 Act No. 342, Section 4, eff July 1, 2006; 2010 Act No. 212, Section 5, eff June 7, 2010.

Editor’s Note

2006 Act No. 342, Section 1, provides as follows:

“This act may be cited as the ‘Sex Offender Accountability and Protection of Minors Act of 2006’.”

Effect of Amendment

The 2006 amendment, in subsection (A), in the first sentence substituted “bi‑annually” for “annually” and “during the month of his birthday and again during the sixth month following his birth month” for “within thirty days after the anniversary date of the offender’s last registration” and in the second sentence substituted “person required to register shall register and must reregister” for “offender shall register”; and made nonsubstantive and conforming amendments throughout.

The 2010 amendment rewrote this section.

Federal Aspects

For the Sex Offender Registration and Notification Act (SORNA), Title I of the Adam Walsh Child Protection and Safety Act of 2006, see 42 U.S.C.A. Section 16901 et seq.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

Attorney General’s Opinions

Regardless of the Probation Judge’s order modifying Defendant’s requirement to register as a sex offender as a condition of probation, the South Carolina Sex Offender Registry Act separately requires Defendant to register as a sex offender. S.C. Op.Atty.Gen. (Feb. 14, 2012) 2012 WL 605706.

It would not be an ex post facto prohibition to require an individual who formerly had to register biannually to now register every ninety days if he or she comes within the category of an individual classified as a Tier III offender. S.C. Op.Atty.Gen. (Oct. 14, 2010) 2010 WL 4391641.

NOTES OF DECISIONS

In general 1

Due process 2

Juvenile offenders 3

1. In general

State’s failure to notify defendant of the new bi‑annual registration requirements when Sex Offender Registry Act was amended did not violate the due process rights of defendant who was convicted of failure to register as a sex offender; Act was a statewide registration program, registration requirement was directed at a narrow class of defendants rather than all felons, Act was specifically enacted as a public safety measure based on the legislature’s determination that convicted sex offenders posed an unacceptable risk to the general public once released from incarceration, and had the legislature intended to notify defendant of the need to register bi‑annually, legislature could have included such language in the Act. State v. Latimore (S.C.App. 2010) 390 S.C. 88, 700 S.E.2d 456, certiorari granted, affirmed as modified 397 S.C. 9, 723 S.E.2d 589. Constitutional Law 4509(1); Mental Health 469.5

Defendant’s telephone call to coordinator of county sex offender registry in an effort to update his address was not sufficient to comply with Sex Offender Registry Act; Act’s plain language required defendant to initially register and reregister each year during the month of his birthday and again during the sixth month following his birth month at the sheriff’s department in each county where he resided. State v. Latimore (S.C.App. 2010) 390 S.C. 88, 700 S.E.2d 456, certiorari granted, affirmed as modified 397 S.C. 9, 723 S.E.2d 589. Mental Health 469(5)

When the South Carolina Law Enforcement Division (SLED) registers a sex criminal due to his conviction of a sexual offense in another state, the agency must correctly state the offense the criminal committed in that jurisdiction, and accordingly, SLED must list under the “Offense” heading: (1) the state where the offense was committed; (2) the citation of that state’s statute that was violated; (3) the name of the crime committed; and (4) the date of conviction. Hendrix v. Taylor (S.C. 2003) 353 S.C. 542, 579 S.E.2d 320. Mental Health 469(2)

2. Due process

Evidence was insufficient to show that defendant had actual notice, as required by due process, of his duty to re‑register as a sex offender under a statutory amendment that required sex offenders to register biannually instead of annually, so as to preclude a conviction for failing to timely register as a sex offender, even though a detective testified that she generally sent notification letters to the registered sex offenders in a particular county, that a letter addressed to defendant was not returned as undeliverable, and that a certified letter mailed to defendant regarding his failure to appear to re‑register was returned as unclaimed; defendant denied receiving any such letters, detective acknowledged that defendant might not have received either letter before his required registration date, and the state did not produce a copy of the notification letter. State v. Binnarr (S.C. 2012) 400 S.C. 156, 733 S.E.2d 890, rehearing denied. Constitutional Law 4509(1); Mental Health 469.5

To comport with due process, a defendant must have actual notice of the sex‑offender reporting requirements before he can be convicted of violating the statute requiring a sex offender to register. State v. Binnarr (S.C. 2012) 400 S.C. 156, 733 S.E.2d 890, rehearing denied. Constitutional Law 4509(1)

To satisfy due process, a convicted sex offender charged with a violation of the statutory re‑registration requirement must have had actual notice of the amendment thereto which imposed an additional registration requirement. State v. Latimore (S.C. 2012) 397 S.C. 9, 723 S.E.2d 589. Constitutional Law 4343

Any due process violation inherent in failure to inform sex offender of additional re‑registration requirement imposed by statutory amendment was harmless, where lack of notice was attributable to offender’s failure to timely attempt to re‑register according to schedule in effect at time registration requirement was imposed, and schedule established by statutory amendment would have given offender four‑month extension of time to re‑register. State v. Latimore (S.C. 2012) 397 S.C. 9, 723 S.E.2d 589. Criminal Law 1165(1)

3. Juvenile offenders

Juvenile adjudicated delinquent for first‑degree criminal sexual conduct with minor, committed when juvenile was 15 years old, did not have constitutionally protected liberty or property interest in his reputation that precluded public’s access to sex offender registry information. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Constitutional Law 4348; Infants 3204

State’s parens patriae duty to protect children was not basis for striking mandatory lifetime sex offender registration and electronic monitoring requirements on juvenile sex offender adjudicated delinquent for first‑degree criminal sexual conduct with minor; policy behind doctrine of parens patriae presented question for Legislature, not the courts, and in any case, sex offender registration and electronic monitoring requirements was consistent with State’s duty to protect children who were often victims of sexual assault. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Infants 3204

Mandatory lifetime sex offender registration and electronic monitoring was not cruel and unusual punishment as applied to juvenile offender adjudicated delinquent for first‑degree criminal sexual conduct with minor; sex offender registry was non‑punitive, purpose of sex offender registry had nothing to do with retribution, but instead served goals of protecting public and aiding law enforcement, lifetime registration was rationally related to those goals, and any deterrent effect of registration derived from availability of information, not from punishment. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Infants 3204; Sentencing and Punishment 1601; Sentencing and Punishment 1607

**SECTION 23‑3‑465.** Residence in campus student housing.

 Any person required to register under this article is prohibited from living in campus student housing at a public institution of higher learning supported in whole or in part by the State.

HISTORY: 2005 Act No. 94, Section 2.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑470.** Failure to register or provide required notifications; penalties.

 (A) It is the duty of the offender to contact the sheriff in order to register, provide notification of change of permanent or temporary address, or notification of change of employment, or in attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, including, but not limited to, a kindergarten, elementary school, middle school or junior high, high school, secondary school, adult education school, college or university, and any vocational, technical, or occupational school. If an offender fails to register, provide notification of change of address, or notification of permanent or temporary change in employment, or attendance, enrollment, employment, volunteer status, intern status, or vocation status at any public or private school, as required by this article, he must be punished as provided in subsection (B).

 (B)(1) A person convicted for a first offense is guilty of a misdemeanor and may be fined not more than one thousand dollars, or imprisoned for not more than three hundred sixty‑six days, or both. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, or any other provision of law, a first offense may be tried in magistrates court.

 (2) A person convicted for a second offense is guilty of a misdemeanor and must be imprisoned for a mandatory period of three hundred sixty‑six days, no part of which shall be suspended nor probation granted.

 (3) A person convicted for a third or subsequent offense is guilty of a felony and must be imprisoned for a mandatory period of five years, three years of which shall not be suspended nor probation granted.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1; 2005 Act No. 141, Section 6; 2008 Act No. 333, Section 2, eff June 16, 2009; 2010 Act No. 212, Section 6, eff June 7, 2010.

Editor’s Note

2008 Act No. 333, Section 4, provides as follows:

“This act takes effect upon approval by the Governor and ninety days after the State Law Enforcement Division has certified that sex offender mapping software has been implemented.”

2009 Act No. 77, Section 2 provides as follows:

“SECTION 2 of Act 333 of 2008 shall take effect upon approval of this act by the Governor. All other sections of Act 333 of 2008 shall take effect as provided in SECTION 4 of Act 333 of 2008.”

Effect of Amendment

The 2008 amendment, in paragraph (B)(1), substituted “may be fined not more than five hundred dollars or imprisoned for not more than thirty days, or both” for “must be imprisoned for a mandatory period of ninety days, no part of which shall be suspended nor probation granted”.

The 2010 amendment rewrote this section.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

Notes of Decisions

In general 1

Due process 2

1. In general

State’s failure to notify defendant of the new bi‑annual registration requirements when Sex Offender Registry Act was amended did not violate the due process rights of defendant who was convicted of failure to register as a sex offender; Act was a statewide registration program, registration requirement was directed at a narrow class of defendants rather than all felons, Act was specifically enacted as a public safety measure based on the legislature’s determination that convicted sex offenders posed an unacceptable risk to the general public once released from incarceration, and had the legislature intended to notify defendant of the need to register bi‑annually, legislature could have included such language in the Act. State v. Latimore (S.C.App. 2010) 390 S.C. 88, 700 S.E.2d 456, certiorari granted, affirmed as modified 397 S.C. 9, 723 S.E.2d 589. Constitutional Law 4509(1); Mental Health 469.5

Probation officer’s testimony as to whether he had notified defendant of his obligation to register bi‑annually as a sex offender was irrelevant and thus inadmissible, in prosecution for failure to register, where probation officer was not defendant’s probation officer at the time defendant’s registration was in issue, nor was probation officer responsible for ensuring offenders fulfilled their registration requirements. State v. Latimore (S.C.App. 2010) 390 S.C. 88, 700 S.E.2d 456, certiorari granted, affirmed as modified 397 S.C. 9, 723 S.E.2d 589. Mental Health 469.5

2. Due process

Evidence was insufficient to show that defendant had actual notice, as required by due process, of his duty to re‑register as a sex offender under a statutory amendment that required sex offenders to register biannually instead of annually, so as to preclude a conviction for failing to timely register as a sex offender, even though a detective testified that she generally sent notification letters to the registered sex offenders in a particular county, that a letter addressed to defendant was not returned as undeliverable, and that a certified letter mailed to defendant regarding his failure to appear to re‑register was returned as unclaimed; defendant denied receiving any such letters, detective acknowledged that defendant might not have received either letter before his required registration date, and the state did not produce a copy of the notification letter. State v. Binnarr (S.C. 2012) 400 S.C. 156, 733 S.E.2d 890, rehearing denied. Constitutional Law 4509(1); Mental Health 469.5

To comport with due process, a defendant must have actual notice of the sex‑offender reporting requirements before he can be convicted of violating the statute requiring a sex offender to register. State v. Binnarr (S.C. 2012) 400 S.C. 156, 733 S.E.2d 890, rehearing denied. Constitutional Law 4509(1)

**SECTION 23‑3‑475.** Registering with false information; penalties.

 (A) Anyone who knowingly and wilfully gives false information when registering as an offender pursuant to this article must be punished as provided in subsection (B).

 (B)(1) A person convicted for a first offense is guilty of a misdemeanor and may be fined not more than one thousand dollars, or imprisoned for not more than three hundred sixty‑six days, or both. Notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, or any other provision of law, a first offense may be tried in magistrates court.

 (2) A person convicted for a second offense is guilty of a misdemeanor and must be imprisoned for a mandatory period of three hundred sixty‑six days, no part of which shall be suspended nor probation granted.

 (3) A person convicted for a third or subsequent offense is guilty of a felony and must be imprisoned for a mandatory period of five years, three years of which shall not be suspended nor probation granted.

HISTORY: 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1; 2010 Act No. 212, Section 7, eff June 7, 2010.

Effect of Amendment

The 2010 amendment rewrote subsection (B)(1); and, in subsection (B)(2), substituted “three hundred sixty‑six days,” for “one year” following “a mandatory period of”.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑480.** Notice of duty to register; what constitutes; registration following charge of failure to register not a defense.

 (A) An arrest on charges of failure to register, service of an information or complaint for failure to register, or arraignment on charges of failure to register constitutes actual notice of the duty to register. A person charged with the crime of failure to register who asserts as a defense the lack of notice of the duty to register shall register immediately following actual notice through arrest, service, or arraignment. Failure to register after notice as required by this article constitutes grounds for filing another charge of failure to register. Registering following arrest, service, or arraignment on charges does not relieve the offender from the criminal penalty for failure to register before the filing of the original charge.

 (B) Section 23‑3‑470 shall not apply to a person convicted of an offense provided in Section 23‑3‑430 prior to July 1, 1994, and who was released from custody prior to July 1, 1994, unless the person has been served notice of the duty to register by the sheriff of the county in which the person resides. This person shall register within ten days of the notification of the duty to register.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑490.** Public inspection of offender registry.

 (A) Information collected for the offender registry is open to public inspection, upon request to the county sheriff. A sheriff must release information regarding persons required to register under this article to a member of the public if the request is made in writing, on a form prescribed by SLED. The sheriff 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 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) 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) Nothing in subsection (A) prohibits a sheriff 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) 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 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) For purposes of this section, use of computerized or electronic transmission of data or other electronic or similar means is permitted.

HISTORY: 1994 Act No. 497, Part II, Section 112A; 1996 Act No. 444, Section 16; 1998 Act No. 384, Section 1; 1999 Act No. 110, Section 2; 2010 Act No. 289, Section 9, eff June 11, 2010; 2012 Act No. 255, Section 6, eff June 18, 2012; 2015 Act No. 7 (S.196), Section 6.E, eff April 2, 2015.

Effect of Amendment

The 2010 amendment added subparagraph (D)(1)(h), relating to trafficking in persons.

The 2012 amendment substituted “16‑3‑655(A)” for “16‑3‑655(1)” in subsection (D)(1)(c); substituted “16‑3‑655(B)” for “16‑3‑655(2) and (3)” in subsection (D)(1)(d); and in subsection (D)(2)(D), substituted “criminal sexual conduct with minors, third degree (Section 16‑3‑655(C))” for “committing or attempting lewd act upon child under sixteen (Section 16‑15‑140)”.

2015 Act No. 7, Section 6.E, in (D)(1)(h), substituted “16‑3‑2020” for 16‑3‑930”.

CROSS REFERENCES

Punishment of persons committing criminal offenses using sex offender registry information, see Section 23‑3‑510.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

ALR Library

78 ALR 5th 489 , Validity, Construction, and Application of State Statutes Authorizing Community Notification of Release of Convicted Sex Offender.

**SECTION 23‑3‑500.** Psychiatric or psychological treatment for children adjudicated for certain sex offenses.

 A court must order that a child under twelve years of age who is convicted of, pleads guilty or nolo contendere to, or is adjudicated for an offense listed in Section 23‑3‑430(C) be given appropriate psychiatric or psychological treatment to address the circumstances of the offense for which the child was convicted, pled guilty or nolo contendere, or adjudicated.

HISTORY: 1998 Act No. 384, Section 1.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑510.** Persons committing criminal offenses using sex offender registry information; punishment.

 A person who commits a criminal offense using information from the sex offender registry disclosed to him pursuant to Section 23‑3‑490, upon conviction, must be punished as follows:

 (1) For a misdemeanor offense, the maximum fine prescribed by law for the offense may be increased by not more than one thousand dollars, and the maximum term of imprisonment prescribed by law for the offense may be increased by not more than six months.

 (2) For a felony offense, the maximum term of imprisonment prescribed by law for the offense may be increased by not more than five years.

HISTORY: 1998 Act No. 384, Section 1.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑520.** Immunity of public officials, employees, and agencies for acts or omissions under this article; exceptions; duties regarding disclosure of information.

 (A) An appointed or elected public official, public employee, or public agency is immune from civil liability for damages for any act or omission under this article unless the official’s, employee’s, or agency’s conduct constitutes gross negligence.

 (B) Nothing in this chapter imposes an affirmative duty on a person to disclose to a member of the public information from the sex offender registry other than on those persons responsible for providing registry information pursuant to their official duties as provided for in this chapter.

 (C) Nothing in this section may be construed to mean that information regarding persons on the sex offender registry is confidential except as otherwise provided by law.

HISTORY: 1998 Act No. 384, Section 1.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑525.** Notice by real estate brokerage about obtaining sex offender registry information.

 A real estate brokerage and its affiliated licensees is immune from liability for any act or omission related to the disclosure of information under this chapter if the brokerage or its affiliated licensees in a timely manner provides to its clients and customers written notice that they may obtain information about the sex offender registry and persons registered with the registry by contacting the county sheriff. The notice may be included as part of a listing agreement, buyer representation agreement, or sales agreement.

HISTORY: 2005 Act No. 141, Section 7.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑530.** Protocol manual for sex offender registry; contents.

 The State Law Enforcement Division shall develop and maintain a protocol manual to be used by contributing agencies in the administration of the sex offender registry. The protocol manual must include, but is not limited to, the following:

 (1) procedures for the verification of addresses by the sheriff’s department in the county where the person resides; and

 (2) specific requirements for registration and reregistration including, but not limited to, the following:

 (a) the name, social security number, age, race, sex, date of birth, height, weight, hair and eye color; address of permanent residence, address of current temporary residence, within the State or out of state, including rural route address and post office box, which may not be provided instead of a physical residential address; date and place of employment; vehicle make, model, color, and license tag number, including work vehicles that are used the majority of the employee’s work time, and the permanent or frequent location where all vehicles are kept; fingerprints and palm prints; Internet identifiers; passport and immigration documents; and a photograph;

 (b) the name, address, and county of each institution of higher learning, including the specific campus location, if the person is enrolled, employed, volunteers, interns, or carries on a vocation there;

 (c) the vehicle identification number, license tag number, registration number, and a description, including the color scheme, if the person lives in a motor vehicle, trailer, mobile home, or manufactured home and the permanent or frequent location where all vehicles, trailers, mobile homes, and manufactured homes are kept;

 (d) the hull identification number, the manufacturer’s serial number, the name of the vessel, live‑aboard vessel, or houseboat, the registration number, and a description of the color scheme, if the person lives in a vessel, live‑aboard vessel, or houseboat; and

 (e) the tail number, manufacturer’s serial number, and model of any aircraft, and a description of the aircraft, including the color scheme, and the permanent or frequent location where all aircraft are kept, if the person owns or operates an aircraft.

HISTORY: 1999 Act No. 110, Section 1; 2006 Act No. 342, Section 5, eff July 1, 2006; 2010 Act No. 212, Section 8, eff June 7, 2010.

Editor’s Note

2006 Act No. 342, Section 1, provides as follows:

“This act may be cited as the ‘Sex Offender Accountability and Protection of Minors Act of 2006’.”

Effect of Amendment

The 2006 amendment added items (1) and (2) setting forth required contents.

The 2010 amendment rewrote subsection (2).

Library References

Mental Health 469.

Westlaw Topic No. 257A.

**SECTION 23‑3‑535.** Limitation on places of residence of certain sex offenders; exceptions; violations; local government ordinances; school districts required to provide certain information.

 (A) As contained in this section:

 (1) “Children’s recreational facility” means a facility owned and operated by a city, county, or special purpose district used for the purpose of recreational activity for children under the age of eighteen.

 (2) “Daycare center” means an arrangement where, at any one time, there are three or more preschool‑age children, or nine or more school‑age children receiving child care.

 (3) “School” does not include a home school or an institution of higher education.

 (4) “Within one thousand feet” means a measurement made in a straight line, without regard to intervening structures or objects, from the nearest portion of the property on which the sex offender resides to the nearest property line of the premises of a school, daycare center, children’s recreational facility, park, or public playground, whichever is closer.

 (B) It is unlawful for a sex offender who has been convicted of any of the following offenses to reside within one thousand feet of a school, daycare center, children’s recreational facility, park, or public playground:

 (1) criminal sexual conduct with a minor, first degree;

 (2) criminal sexual conduct with a minor, second degree;

 (3) assault with intent to commit criminal sexual conduct with a minor;

 (4) kidnapping a person under eighteen years of age; or

 (5) trafficking in persons of a person under eighteen years of age 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) This section does not apply to a sex offender who:

 (1) resided within one thousand feet of a school, daycare center, children’s recreational facility, park, or public playground before the effective date of this act;

 (2) resided within one thousand feet of a school, daycare center, children’s recreational facility, park, or public playground on property the sex offender owned before the sex offender was charged with any of the offenses enumerated in subsection (B);

 (3) resides within one thousand feet of a school, daycare center, children’s recreational facility, park, or public playground as a result of the establishment of a new school, daycare center, children’s recreational facility, park, or public playground;

 (4) resides in a jail, prison, detention facility, group home for persons under the age of twenty‑one licensed by the Department of Social Services, residential treatment facility for persons under the age of twenty‑one licensed by the Department of Health and Environmental Control, or other holding facility, including a mental health facility;

 (5) resides in a homeless shelter for no more than one year, a group home for persons under the age of twenty‑one licensed by the Department of Social Services, or a residential treatment facility for persons under the age of twenty‑one licensed by the Department of Health and Environmental Control, and the site was purchased by the organization prior to the effective date of this act;

 (6) resides in a community residential care facility, as defined in Section 44‑7‑130(6); or

 (7) resides in a nursing home, as defined in Section 44‑7‑130(13).

 (D) If upon registration of a sex offender, or at any other time, a local law enforcement agency determines that a sex offender is in violation of this section, the local law enforcement agency must, within thirty days, notify the sex offender of the violation, provide the sex offender with a list of areas in which the sex offender is not permitted to reside, and notify the sex offender that the sex offender has thirty days to vacate the residence. If the sex offender fails to vacate the residence within thirty days, the sex offender must be punished as follows:

 (1) for a first offense, the sex offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than thirty days, or fined not more than five hundred dollars, or both;

 (2) for a second offense, the sex offender is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years, or fined not more than one thousand dollars, or both;

 (3) for a third or subsequent offense, the sex offender is guilty of a felony and, upon conviction, must be imprisoned for not more than five years, or fined not more than five thousand dollars, or both.

 (E) A local government may not enact an ordinance that:

 (1) contains penalties that exceed or are less lenient than the penalties contained in this section; or

 (2) expands or contracts the boundaries of areas in which a sex offender may or may not reside as contained in subsection (B).

 (F)(1) At the beginning of each school year, each school district must provide:

 (a) the names and addresses of every sex offender who resides within one thousand feet of a school bus stop within the school district to the parents or guardians of a student who boards or disembarks a school bus at a stop covered by this subsection; or

 (b) the hyperlink to the sex offender registry web site on the school district’s web site for the purpose of gathering this information.

 (2) Local law enforcement agencies must check the school districts’ web sites to determine if each school district has complied with this subsection. If a hyperlink does not appear on a school district web site, the local law enforcement agency must contact the school district to confirm that the school district has provided the parents or guardians with the names and addresses of every sex offender who resides within one thousand feet of a school bus stop within the school district. If the local law enforcement agency determines that this information has not been provided, the local law enforcement agency must inform the school district that it is in violation of this subsection. If the school district does not comply within thirty days after notice of its violation, the school district is subject to equitable injunctive relief and, if the plaintiff prevails, the district shall pay the plaintiff’s attorney’s fees and costs.

HISTORY: 2008 Act No. 333, Section 1, eff June 16, 2008; 2009 Act No. 77, Section 1, eff June 16, 2009; 2010 Act No. 289, Section 10, eff June 11, 2010.

Editor’s Note

2008 Act No. 333, Section 4, provides as follows:

“This act takes effect upon approval by the Governor and ninety days after the State Law Enforcement Division has certified that sex offender mapping software has been implemented.”

2009 Act No. 77, Section 2 provides as follows:

“SECTION 2 of Act 333 of 2008 shall take effect upon approval of this act by the Governor. All other sections of Act 333 of 2008 shall take effect as provided in SECTION 4 of Act 333 of 2008.”

Effect of Amendment

The 2009 amendment, in subsection (E), designated paragraph (1) and added paragraph (2) relating to changing the boundaries in which a sex offender may or may not reside.

The 2010 amendment added paragraph (B)(5), relating to trafficking in persons.

**SECTION 23‑3‑540.** Electronic monitoring; reporting damage to or removing monitoring device; penalty.

 (A) Upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person for committing criminal sexual conduct with a minor in the first degree, pursuant to Section 16‑3‑655(A)(1), or criminal sexual conduct with a minor in the third degree, pursuant to Section 16‑3‑655(C), the court must order that the person, upon release from incarceration, confinement, commitment, institutionalization, or when placed under the supervision of the Department of Probation, Parole and Pardon Services shall be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.

 (B) Upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere of a person for any other offense listed in subsection (G), the court may order that the person upon release from incarceration, confinement, commitment, institutionalization, or when placed under the supervision of the Department of Probation, Parole and Pardon Services shall be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.

 (C) A person who is required to register pursuant to this article for committing criminal sexual conduct with a minor in the first degree, pursuant to Section 16‑3‑655(A)(1), or criminal sexual conduct with a minor in the third degree, pursuant to Section 16‑3‑655(C), and who violates a term of probation, parole, community supervision, or a community supervision program must be ordered by the court or agency with jurisdiction to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.

 (D) A person who is required to register pursuant to this article for any other offense listed in subsection (G), and who violates a term of probation, parole, community supervision, or a community supervision program, may be ordered by the court or agency with jurisdiction to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.

 (E) A person who is required to register pursuant to this article for committing criminal sexual conduct with a minor in the first degree, pursuant to Section 16‑3‑655(A)(1), or criminal sexual conduct with a minor in the third degree, pursuant to Section 16‑3‑655(C), and who violates a provision of this article, must be ordered by the court to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.

 (F) A person who is required to register pursuant to this article for any other offense listed in subsection (G), and who violates a provision of this article, may be ordered by the court to be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device.

 (G) This section applies to a person who has been:

 (1) convicted of, pled guilty or nolo contendere to, or been adjudicated delinquent for any of the following offenses:

 (a) criminal sexual conduct with a minor in the first degree (Section 16‑3‑655(A));

 (b) criminal sexual conduct with a minor in the 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 illicit 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, then the convicted person is not required to be electronically monitored pursuant to the provisions of this section;

 (c) criminal sexual conduct with a minor in the third degree (Section 16‑3‑655(C));

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

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

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

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

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

 (i) trafficking in persons (Section 16‑3‑2020) of a person under eighteen years of age 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; or

 (2) ordered as a condition of sentencing to be included in the sex offender registry pursuant to Section 23‑3‑430(D) for an offense involving a minor, except that the provisions of this item may not be construed to apply to a person eighteen years of age or less who engages in illicit but consensual sexual conduct with another person who is at least fourteen years of age as provided in Section 16‑3‑655(B)(2).

 (H) The person shall be monitored by the Department of Probation, Parole and Pardon Services with an active electronic monitoring device for the duration of the time the person is required to remain on the sex offender registry pursuant to the provisions of this article, unless the person is committed to the custody of the State. Ten years from the date the person begins to be electronically monitored, the person may petition the chief administrative judge of the general sessions court for the county in which the person was ordered to be electronically monitored for an order to be released from the electronic monitoring requirements of this section. The person shall serve a copy of the petition upon the solicitor of the circuit and the Department of Probation, Parole and Pardon Services. The court must hold a hearing before ordering the person to be released from the electronic monitoring requirements of this section, unless the court denies the petition because the person is not eligible for release or based on other procedural grounds. The solicitor of the circuit, the Department of Probation, Parole and Pardon Services, and any victims, as defined in Article 15, Chapter 3, Title 16, must be notified of any hearing pursuant to this subsection and must be given an opportunity to testify or submit affidavits in response to the petition. If the court finds that there is clear and convincing evidence that the person has complied with the terms and conditions of the electronic monitoring and that there is no longer a need to electronically monitor the person, then the court may order the person to be released from the electronic monitoring requirements of this section. If the court denies the petition or refuses to grant the order, then the person may refile a new petition every five years from the date the court denies the petition or refuses to grant the order. A person may not petition the court if the person is required to register pursuant to this article for committing criminal sexual conduct with a minor in the first degree, pursuant to Section 16‑3‑655(A)(1), or criminal sexual conduct with a minor in the third degree, pursuant to Section 16‑3‑655(C).

 (I) The person shall follow instructions provided by the Department of Probation, Parole and Pardon Services to maintain the active electronic monitoring device in working order. Incidental damage or defacement of the active electronic monitoring device must be reported to the Department of Probation, Parole and Pardon Services within two hours. A person who fails to comply with the reporting requirement of this subsection is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

 (J) The person shall abide by other terms and conditions set forth by the Department of Probation, Parole and Pardon Services with regard to the active electronic monitoring device and electronic monitoring program.

 (K) The person must be charged for the cost of the active electronic monitoring device and the operation of the active electronic monitoring device for the duration of the time the person is required to be electronically monitored. The Department of Probation, Parole and Pardon Services may exempt a person from the payment of a part or all of the cost during a part or all of the duration of the time the person is required to be electronically monitored, if the Department of Probation, Parole and Pardon Services determines that exceptional circumstances exist such that these payments cause a severe hardship to the person. The payment of the cost must be a condition of supervision of the person and a delinquency of two months or more in making payments may operate as a violation of a term or condition of the electronic monitoring. All fees generated by this subsection must be retained by the Department of Probation, Parole and Pardon Services, carried forward, and applied to support the active electronic monitoring of sex offenders.

 (L) A person who intentionally removes, tampers with, defaces, alters, damages, or destroys an active electronic monitoring device is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years. This subsection does not apply to a person or agent authorized by the Department of Probation, Parole and Pardon Services to perform maintenance and repairs to the active electronic monitoring devices.

 (M) A person who completes his term of incarceration and the maximum term of probation, parole, or community supervision and who wilfully violates a term or condition of electronic monitoring, as ordered by the court or determined by the Department of Probation, Parole and Pardon Services is guilty of a felony and, upon conviction, must be sentenced in accordance with the provisions of Section 23‑3‑545.

 (N) The Department of Corrections shall notify the Department of Probation, Parole and Pardon Services of the projected release date of an inmate serving a sentence, as described in this section, at least one hundred eighty days in advance of the person’s release from incarceration. For a person sentenced to one hundred eighty days or less, the Department of Corrections shall immediately notify the Department of Probation, Parole and Pardon Services.

 (O) When an inmate serving a sentence as described in this section is released on electronic monitoring, a victim who has previously requested notification and the sheriff’s office in the county where the person is to be released must be notified in accordance with the requirements of Article 15, Chapter 3, Title 16.

 (P) As used in this section, “active electronic monitoring device” means an all body worn device that is not removed from the person’s body utilized by the Department of Probation, Parole and Pardon Services in conjunction with a web‑based computer system that actively monitors and records a person’s location at least once every minute twenty‑four hours a day and that timely records and reports the person’s presence near or within a prohibited area or the person’s departure from a specified geographic location. In addition, the device must be resistant or impervious to unintentional or wilful damages. The South Carolina Criminal Justice Academy may offer training to officers of the Department of Probation, Parole and Pardon Services regarding the utilization of active electronic monitoring devices. In areas of the State where cellular coverage requires the use of an alternate device, the Department of Probation, Parole and Pardon Services may use an alternate device.

 (Q) Except for juveniles released from the Department of Corrections, all juveniles adjudicated delinquent in family court, who are required to be monitored pursuant to the provisions of this article by the Department of Probation, Parole and Pardon Services, or who are ordered by a court to be monitored must be supervised, while under the jurisdiction of the family court or Board of Juvenile Parole, by the Department of Juvenile Justice. The Department of Probation, Parole and Pardon Services shall report to the Department of Juvenile Justice all violations of the terms or conditions of electronic monitoring for all juveniles supervised by the department, for as long as the family court or Juvenile Parole Board has jurisdiction over the juvenile. If the Department of Juvenile Justice determines that a juvenile has violated a term or condition of electronic monitoring, the department shall immediately notify local law enforcement of the violation.

HISTORY: 2005 Act No. 141, Section 8; 2006 Act No. 342, Section 6, eff July 1, 2006; 2006 Act No. 346, Section 3, eff July 1, 2006; 2008 Act No. 335, Sections 15, 20, eff June 16, 2008; 2010 Act No. 289, Section 11, eff June 11, 2010; 2012 Act No. 255, Section 7, eff June 18, 2012; 2015 Act No. 7 (S.196), Section 6.F, eff April 2, 2015.

Editor’s Note

2006 Act No. 342, Section 1, provides as follows:

“This act may be cited as the ‘Sex Offender Accountability and Protection of Minors Act of 2006’.”

2006 Act No. 346, Section 6, provides as follows:

“The General Assembly is aware that this act amends sections of the South Carolina Code of Laws that are also amended in S.1267 of 2006 [Act 342], and it is the intent of the General Assembly that the provisions of this act control in their entirety as to those code sections.”

Effect of Amendment

Both 2006 amendments rewrote this section; see Editor’s Note for provision stating that the second amendment [ by Act No. 346] controls.

The 2008 amendment deleted paragraph (M)(2) relating to admissibility of information gathered by a probation agent and deleted the designation of paragraph (M)(1); and rewrote subsection (P) defining active electronic monitoring device.

The 2010 amendment added subparagraph (G)(1)(i), relating to trafficking in persons.

The 2012 amendment in subsections (A), (C), (E), (G), and (H), substituted references to criminal sexual conduct with a minor in the third degree for committing or attempting a lewd act upon a child under 16; and made other nonsubstantive changes.

2015 Act No. 7, Section 6.F, in (G)(1)(i), substituted “16‑3‑2020” for 16‑3‑930”.

Library References

Mental Health 469.

Westlaw Topic No. 257A.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Sexual Conduct Section 5, Committing or Attempting a Lewd Act Upon a Child Under Fourteen.

Attorney General’s Opinions

An individual subject to electronic monitoring, who has completed their sentence and any applicable terms of probation or parole, is not disqualified from either registering to vote or voting pursuant to Section 7‑5‑120(B)(3). S.C. Op.Atty.Gen. (August 19, 2014) 2014 WL 4382450.

Notes of Decisions

Constitutional issues 1⁄4

Construction and application 1

Juvenile offenders 2

1⁄4. Constitutional issues

Mandatory lifetime sex offender registration and electronic monitoring was not cruel and unusual punishment as applied to juvenile offender adjudicated delinquent for first‑degree criminal sexual conduct with minor; sex offender registry was non‑punitive, purpose of sex offender registry had nothing to do with retribution, but instead served goals of protecting public and aiding law enforcement, lifetime registration was rationally related to those goals, and any deterrent effect of registration derived from availability of information, not from punishment. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Infants 3204; Sentencing and Punishment 1601; Sentencing and Punishment 1607

The mandatory imposition of global positioning satellite (GPS) monitoring on defendant, a sex offender convicted prior to the GPS statute’s effective date, did not violate the ex post facto, equal protection, due process, or double jeopardy clauses of the United States Constitution; an initial, mandatory imposition of GPS monitoring for certain sex crimes involving children was rationally related to the law’s stated purpose of protecting the public from sex offenders. State v. Nation (S.C. 2014) 408 S.C. 474, 759 S.E.2d 428, rehearing denied, certiorari denied 135 S.Ct. 1534, 191 L.Ed.2d 564. Constitutional Law 2820; Double Jeopardy 22; Mental Health 433(2)

The mandatory imposition of global positioning satellite (GPS) monitoring on defendant, a sex offender convicted prior to the GPS statute’s effective date, did not constitute cruel or unusual punishment; electronic monitoring was not a punishment but a civil requirement. State v. Nation (S.C. 2014) 408 S.C. 474, 759 S.E.2d 428, rehearing denied, certiorari denied 135 S.Ct. 1534, 191 L.Ed.2d 564. Mental Health 465(1); Sentencing and Punishment 1601

Electronic monitoring requirement for individuals convicted of certain sex‑related offenses is not a punishment for Eighth Amendment purposes, but rather is a civil obligation lawfully placed on sex offenders; legislative intent for requirement was to protect public safety, monitoring was not historically regarded as punishment, stigma of monitoring was not a basic component of the regulatory scheme, monitoring did not impose an affirmative disability or restraint, monitoring requirement was not excessive in relation to the threat posed by sex offenders, and necessity of continued monitoring was subject to periodic judicial review. In re Justin B. (S.C. 2013) 405 S.C. 391, 747 S.E.2d 774, certiorari denied 134 S.Ct. 1496, 188 L.Ed.2d 380. Mental Health 433(2); Sentencing and Punishment 1601

Statute mandating lifetime satellite monitoring of certain child sex offenders without judicial review related to an assessment of an individual’s risk of reoffending is arbitrary and fails the rational‑relationship test, such that it violates due process; lack of a risk assessment is not rationally related to the legislature’s stated purpose of protecting the public from those with a high risk of re‑offending. State v. Dykes (S.C. 2013) 403 S.C. 499, 744 S.E.2d 505, certiorari denied 134 S.Ct. 1937, 188 L.Ed.2d 964. Constitutional Law 4343; Mental Health 433(2)

Statutory requirement that certain child sex offenders submit to satellite monitoring upon their release from incarceration or violation of their probation or parole does not violate due process; the requirement is rationally related to the General Assembly’s stated purpose of protecting the public from sex offenders and aiding law enforcement. State v. Dykes (S.C. 2013) 403 S.C. 499, 744 S.E.2d 505, certiorari denied 134 S.Ct. 1937, 188 L.Ed.2d 964. Constitutional Law 4343; Mental Health 433(2)

Imposition of lifetime satellite monitoring of a child sex offender implicates a due process liberty interest to be free from permanent, unwarranted governmental interference. State v. Dykes (S.C. 2013) 403 S.C. 499, 744 S.E.2d 505, certiorari denied 134 S.Ct. 1937, 188 L.Ed.2d 964. Constitutional Law 4343

Child sex offender who opposed mandatory lifetime satellite monitoring upon her violation of probation did not have a fundamental right, protected by the due process clause, to be “let alone.” State v. Dykes (S.C. 2013) 403 S.C. 499, 744 S.E.2d 505, certiorari denied 134 S.Ct. 1937, 188 L.Ed.2d 964. Constitutional Law 4343; Mental Health 433(2)

1. Construction and application

Sex offenders subject to electronic monitoring are not required to comply with the monitoring requirements any longer than they are required to register as sex offenders. In re Justin B. (S.C. 2013) 405 S.C. 391, 747 S.E.2d 774, certiorari denied 134 S.Ct. 1496, 188 L.Ed.2d 380. Mental Health 469(5)

Juvenile defendant subject to electronic monitoring following guilty plea to criminal sexual conduct with a minor in the first degree (CSC‑First) was entitled to petition for judicial review to determine the necessity of continued electronic monitoring ten years after the commencement of electronic monitoring. In re Justin B. (S.C. 2013) 405 S.C. 391, 747 S.E.2d 774, certiorari denied 134 S.Ct. 1496, 188 L.Ed.2d 380. Mental Health 469(5)

Defendant on probation following conviction for first‑degree criminal sexual conduct (CSC) with a minor was subject to electronic monitoring, even though electronic monitoring statute was enacted after defendant’s conviction, where defendant violated terms of his community supervision program (CSP) after enactment of the statute. Duncan v. State (S.C.App. 2011) 391 S.C. 350, 705 S.E.2d 489. Mental Health 469(2)

2. Juvenile offenders

Juvenile sex offender’s assertion that mandatory lifetime sex offender registration and electronic monitoring conflicted with purposes of Children’s Code by treating juveniles same as adult offenders was not proper basis for striking lifetime registration requirement for juvenile adjudicated delinquent for first‑degree criminal sexual conduct with minor; fact that sex offender registration requirements treated juveniles same as adults was prerogative of Legislature, as sex offender registration served State’s goal of protecting children, who were often victims of sex crimes, and to aid law enforcement. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Infants 3204

State’s parens patriae duty to protect children was not basis for striking mandatory lifetime sex offender registration and electronic monitoring requirements on juvenile sex offender adjudicated delinquent for first‑degree criminal sexual conduct with minor; policy behind doctrine of parens patriae presented question for Legislature, not the courts, and in any case, sex offender registration and electronic monitoring requirements was consistent with State’s duty to protect children who were often victims of sexual assault. In Interest of Justin B. (S.C. 2017) 419 S.C. 575, 799 S.E.2d 675. Infants 3204

**SECTION 23‑3‑545.** Effect of conviction of wilfully violating term or condition of active electronic monitoring.

 (A) If a person is convicted of wilfully violating a term or condition of active electronic monitoring pursuant to Section 23‑3‑540(M), the court may impose other terms and conditions considered appropriate and may continue the person on active electronic monitoring, or the court may revoke the active electronic monitoring and impose a sentence of up to ten years for the violation. A person who is incarcerated for a revocation is eligible to earn work credits, education credits, good conduct credits, and other credits which would reduce the sentence for the violation to the same extent he would have been eligible to earn credits on a sentence of incarceration for the underlying conviction. A person who is incarcerated for a revocation pursuant to the provisions of this subsection is not eligible for parole.

 (B) If a person’s electronic monitoring is revoked by the court and the court imposes a period of incarceration for the revocation, the person must be placed back on active electronic monitoring when the person is released from incarceration.

 (C) A person may be sentenced for successive revocations, with each revocation subject to a ten‑year sentence. The maximum aggregate amount of time the person may be required to serve when sentenced for successive revocations may not exceed the period of time the person is required to remain on the sex offender registry.

HISTORY: 2006 Act No. 346, Section 4, eff July 1, 2006.

Editor’s Note

2006 Act No. 346, Section 9, provides as follows:

“This act takes effect on July 1, 2006, except that the provisions of Section 3 [amending this section] regarding the requirements of active electronic monitoring of certain offenders by the Department of Probation, Parole and Pardon Services does not take effect until the General Assembly funds the department to the extent necessary to implement those provisions.”

CROSS REFERENCES

Electronic monitoring, reporting damage to or removing monitoring device, penalty, see Section 23‑3‑540.

**SECTION 23‑3‑550.** Assisting or harboring unregistered sex offender; penalty.

 (A) A person who has reason to believe that a person required to register pursuant to the provisions of this article is not complying or has not complied with the requirements of this article, with the intent to assist or harbor the person required to register in eluding a law enforcement agency, is guilty of the offense of assisting or harboring an unregistered sex offender, if the person:

 (1) withholds information from or does not notify the law enforcement agency of the noncompliance of the provisions of this article by the person required to register, and, if known, the location of this person;

 (2) harbors, attempts to harbor, or assists another person in harboring or attempting to harbor the person required to register;

 (3) conceals, attempts to conceal, or assists another in concealing or attempting to conceal the person required to register; or

 (4) provides information known to be false to a law enforcement agency regarding the person required to register.

 (B) A person who knowingly and wilfully violates the provisions of subsection (A) is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years.

HISTORY: 2005 Act No. 141, Section 9; 2006 Act No. 342, Section 7, eff July 1, 2006.

Editor’s Note

2006 Act No. 342, Section 1, provides as follows:

“This act may be cited as the ‘Sex Offender Accountability and Protection of Minors Act of 2006’.”

Effect of Amendment

The 2006 amendment added subsection (A) and designated the existing text as subsection (B), substituting “violates the provisions of subsection (A)” for “protects, harbors, or conceals an offender who the person knows is not in compliance with the requirements of this article”.

Library References

Compounding Offenses 1.

Westlaw Topic No. 88.

C.J.S. Compounding Offenses Sections 1 to 4, 6 to 9, 13.

**SECTION 23‑3‑555.** Internet account, access provider, identifiers reporting requirements; notification of change; failure to comply; punishment; information provided to interactive computer services; judicial limitations on Internet usage by certain registered sex offenders.

 (A) As used in this section:

 (1) “Interactive computer service” means an information service, system, or access software provider that offers users the capability of generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information via an Internet access provider, including a service or system that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

 (2) “Internet access provider” means a business, organization, or other entity providing directly to consumers a computer and communications facility through which a person may obtain access to the Internet. An Internet access provider does not include a business, organization, or other entity that provides only telecommunications services, cable services, or video services, or any system operated or services offered by a library or educational institution.

 (3) “Internet identifier” means an electronic mail address, user name, screen name, or similar identifier used for the purpose of Internet forum discussions, Internet chat room discussions, instant messaging, social networking, or similar Internet communication.

 (B)(1) A sex offender who is required to register with the sex offender registry pursuant to this article must provide, upon registration and each reregistration, information regarding the offender’s Internet accounts with Internet access providers and the offender’s Internet identifiers.

 (2) A sex offender who is required to register with the sex offender registry pursuant to this article and who changes an Internet account with an Internet access provider or changes an Internet identifier must send written notice of the change to the appropriate sheriff within three business days of changing the Internet account or Internet identifier. A sheriff who receives notification of change of an Internet account or Internet identifier must notify the South Carolina Law Enforcement Division (SLED) within three business days.

 (3) A sex offender who fails to provide Internet account or Internet identifier information, or who fails to provide notification of change of an Internet account or an Internet identifier, must be punished as provided for in Section 23‑3‑470. An offender who knowingly and wilfully gives false information regarding an Internet account or Internet identifier must be punished as provided for in Section 23‑3‑475.

 (C)(1) An interactive computer service may request from SLED, on a form prescribed by SLED, a list of all registered sex offenders or information regarding specific registered sex offenders. In order to receive such information, the interactive computer service must provide identifying information as prescribed by SLED, including, but not limited to, the name, address, telephone number, legal nature, and corporate form of the interactive computer service.

 (2) SLED must release information requested by an interactive computer service, including, but not limited to, the full names of the registered sex offenders, any aliases, any other identifying 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, the date, city, and state of conviction, and any Internet identifiers. A photocopy of a current photograph also must be provided.

 (3) SLED may charge a reasonable fee to cover the cost of copying and distributing information as provided for in this section. These funds must be used for the sole purpose of offsetting the cost of providing such information.

 (4) SLED is not liable and must not be named as a party in an action to recover damages or seek relief for errors or omissions related to the distribution of information pursuant to this section; however, if the error or omission was done intentionally, with malice, or in bad faith, SLED is not immune from liability.

 (5) The interactive computer service may use the information obtained from SLED to prescreen persons wanting to register for its service, identify sex offenders wanting to register for its service or using its service, prevent sex offenders from registering for its service, block sex offenders from using its service, disable sex offenders from using its service, remove sex offenders from its service, or to advise law enforcement or other governmental entities of potential violations of law or threats to public safety. An interactive computer service must not publish or in any way disclose or redisclose any information provided to the interactive computer service by SLED. A person who commits a criminal offense using information disclosed to the person pursuant to this section must be punished as provided for in Section 23‑3‑510.

 (6) An interactive computer service is not liable and must not be named as a party in an action to recover damages or seek relief for:

 (a) making or not making a request for information as permitted by this section;

 (b) prescreening or not prescreening a person wanting to register for its service;

 (c) identifying, blocking, or otherwise preventing a person from registering for its service based on a good faith belief that such person’s Internet account information or Internet identifier appears in the information obtained from SLED, the National Sex Offender Registry, or any analogous state registry;

 (d) not identifying, blocking, or otherwise preventing a person from registering for its service whose Internet account information or Internet identifier appears in the information obtained from SLED, the National Sex Offender Registry, or any analogous state registry;

 (e) identifying, blocking, disabling, removing, or otherwise affecting a user based on a good faith belief that such user’s Internet account information or Internet identifier appears in the information obtained from SLED, the National Sex Offender Registry, or any analogous state registry;

 (f) not identifying, blocking, disabling, removing, or otherwise affecting a user, whose Internet account information or Internet identifier appears in the information obtained from SLED, the National Sex Offender Registry, or any analogous state registry; or

 (g) using or not using the information obtained from SLED to advise law enforcement or other governmental entities of potential violations of law or threats to public safety.

 (D) If a person commits a sexual offense in which the victim is under the age of eighteen at the time of the offense or the person reasonably believes is under the age of eighteen at the time of the offense, and the offender is required to register with the sex offender registry for the offense, then, upon conviction, adjudication of delinquency, guilty plea, or plea of nolo contendere, the judge must order as a condition of probation or parole that the person is prohibited from using the Internet to access social networking websites, communicate with other persons or groups for the purpose of promoting sexual relations with persons under the age of eighteen, and communicate with a person under the age of eighteen when the person is over the age of eighteen. The judge may permit a person to use the Internet to communicate with a person under the age of eighteen when such a person is the parent or guardian of a child under the age of eighteen, or the grandparent of a grandchild under the age of eighteen, and the person is not otherwise prohibited from communicating with the child or grandchild.

HISTORY: 2010 Act No. 212, Section 2, eff June 7, 2010.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Criminal Sexual Conduct Section 2, All Degrees.

ARTICLE 9

State DNA Database

**SECTION 23‑3‑600.** Short title.

 This article may be cited as the State Deoxyribonucleic Acid Identification Record Database Act.

HISTORY: 1994 Act No. 497, Part II, Section 131A.

RESEARCH REFERENCES

ALR Library

76 ALR 5th 239 , Validity, Construction, and Operation of State Dna Database Statutes.

NOTES OF DECISIONS

Validity 1

1. Validity

South Carolina law requiring that certain prisoners provide DNA samples for South Carolina’s DNA bank and pay a $250 processing fee was not punitive in nature and, thus, did not violate ex post facto clause; legislature’s intent in requiring the production of the samples was to protect the public, and not to punish those individuals who had committed specified crimes, purpose of law was to allow the State Law Enforcement Division (SLED) to build up the State DNA database by developing DNA profiles on samples for law enforcement purposes and for humanitarian and nonlaw enforcement purposes, law was codified in title of South Carolina Code dealing with law enforcement and public policy, rather than crimes and punishments, and processing fees were relatively small and were used as primary source of funding DNA database. In re DNA Ex Post Facto Issues (C.A.4 (S.C.) 2009) 561 F.3d 294. Constitutional Law 2815; Prisons 138; Prisons 417

**SECTION 23‑3‑610.** State DNA Database established; purpose.

 There is established in the South Carolina Law Enforcement Division (SLED) the State Deoxyribonucleic Acid (DNA) Identification Record Database (State DNA Database). The State Law Enforcement Division shall develop DNA profiles on samples for law enforcement purposes and for humanitarian and nonlaw enforcement purposes, as provided for in Section 23‑3‑640(B).

HISTORY: 1994 Act No. 497, Part II, Section 131A.

CROSS REFERENCES

Confidentiality of genetic information, see Sections 38‑93‑40, 38‑93‑50.

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Searches and Seizures 78.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 31, 103 to 106.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 101, Nature of Ex Post Facto Laws.

LAW REVIEW AND JOURNAL COMMENTARIES

The Revolution in Human Genetics: Implications for Human Societies, 52 SC Law Rev 377.

Attorney General’s Opinions

The Orangeburg Department of Public Safety may not collect DNA samples at the time of custodial arrest for any individuals outside the scope of those set forth under the provisions of the State Deoxyribonucleic Acid Identification Record Database Act. S.C. Op.Atty.Gen. (April 7, 2011) 2011 WL 1740752.

NOTES OF DECISIONS

In general 1

1. In general

Additional condition of parole that defendant provide DNA sample pursuant to DNA Act did not violate prohibition against ex post facto laws; purpose of Act, which was to create extensive DNA database and assist in criminal investigations, was not penal in nature. Cannon v. South Carolina Dept. of Probation (S.C.App. 2004) 361 S.C. 425, 604 S.E.2d 709, rehearing denied, certiorari granted, reversed 371 S.C. 581, 641 S.E.2d 429. Constitutional Law 2823; Pardon And Parole 64.1

**SECTION 23‑3‑615.** Definitions.

 As used in this article:

 (A) “DNA sample” means the tissue, saliva, blood, or any other bodily fluid taken at the time of arrest from which identifiable information can be obtained.

 (B) “DNA profile” means the results of any testing performed on a DNA sample.

 (C) “DNA record” means the tissue or saliva samples and the results of the testing performed on the samples.

HISTORY: 2008 Act No. 413, Section 4.B, eff January 1, 2009.

Editor’s Note

2008 Act No. 413, Section 4.A provides as follows:

“This SECTION may be cited as the ‘South Carolina Protection from Violence Against Women and Children Act’.”

2008 Act No. 413, Section 4.I provides as follows:

“This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division’s receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23‑3‑620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23‑3‑640.”

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

**SECTION 23‑3‑620.** When DNA samples required.

 (A) Following a lawful custodial arrest, the service of a courtesy summons, or a direct indictment for:

 (1) a felony offense or an offense that is punishable by a sentence of five years or more; or

 (2) eavesdropping, peeping, or stalking, any of which are committed in this State, a person, except for any juvenile, arrested or ordered by a court must provide a saliva or tissue sample from which DNA may be obtained for inclusion in the State DNA Database. Additionally, any person, including any juvenile, ordered to do so by a court, and any juvenile convicted or adjudicated delinquent for an offense contained in items (1) or (2), must provide a saliva or tissue sample from which DNA may be obtained for inclusion in the State DNA Database.

 This sample must be taken at a jail, sheriff’s office that serves a courtesy summons, courthouse where a direct presentment indictment is served, or detention facility at the time the person is booked and processed into the jail or detention facility following the custodial arrest, or other location when the taking of fingerprints is required prior to a conviction. The sample must be submitted to SLED as directed by SLED. If appropriately trained personnel are not available to take a sample from which DNA may be obtained, the failure of the arrested person to provide a DNA sample shall not be the sole basis for refusal to release the person from custody. An arrested person who is released from custody before providing a DNA sample must provide a DNA sample at a location specified by the law enforcement agency with jurisdiction over the offense on or before the first court appearance.

 (B) Unless a sample has already been provided pursuant to the provisions of subsection (A), before a person may be paroled or released from confinement, the person must provide a suitable sample from which DNA may be obtained for inclusion in the State DNA Database.

 (C) An agency having custody of an offender who is required to provide a DNA sample pursuant to subsection (B) must notify SLED at least three days, excluding weekends and holidays, before the person is paroled or released from confinement.

 (D) Unless a sample has already been provided pursuant to the provisions of subsection (A), before a person is released from confinement or released from the agency’s jurisdiction, a suitable sample from which DNA may be obtained for inclusion in the State DNA Database must be provided as a condition of probation or parole.

 (E) A person required to provide a sample pursuant to this section may be required to provide another sample if the original sample is lost, damaged, contaminated, or unusable for examination prior to the creation of a DNA record or DNA profile suitable for inclusion in the State DNA Database.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2000 Act No. 396, Section 4; 2001 Act No. 99, Section 1; 2004 Act No. 230, Section 1; 2008 Act No. 413, Section 4.C, eff January 1, 2009.

Editor’s Note

2008 Act No. 413, Section 4.A provides as follows:

“This SECTION may be cited as the ‘South Carolina Protection from Violence Against Women and Children Act’.”

2008 Act No. 413, Section 4.I provides as follows:

“This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division’s receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23‑3‑620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23‑3‑640.”

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

Effect of Amendment

The 2008 amendment rewrote this section.

CROSS REFERENCES

Informed consent required for genetic test, see Sections 38‑93‑20, 38‑93‑50.

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Searches and Seizures 78.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 31, 103 to 106.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law, Evidence. 43 S.C. L. Rev. 94, Autumn, 1991.

NOTES OF DECISIONS

In general 1

1. In general

Parolee was “paroled” prior to July 1, 2000 when he was released on parole, and thus, parolee was not required to submit DNA sample as condition of parole. Cannon v. South Carolina Dept. of Probation, Parole and Pardon Services (S.C. 2007) 371 S.C. 581, 641 S.E.2d 429, rehearing denied. Pardon And Parole 42.1; Pardon And Parole 64.1

Inmate’s grievance challenging statute requiring inmates convicted of certain crimes to submit DNA sample and statute requiring person providing DNA sample to pay $250 processing fee was properly dismissed by Administrative Law Judge (ALJ) for lack of jurisdiction; inmate’s counsel acknowledged at oral argument that inmate was challenging constitutionality of statutes, and that such a challenge was properly brought as declaratory judgment action in circuit court rather than through administrative grievance process. Slezak v. South Carolina Dept. of Corrections (S.C. 2004) 361 S.C. 327, 605 S.E.2d 506, rehearing denied, certiorari denied, certiorari denied 125 S.Ct. 2266, 544 U.S. 1033, 161 L.Ed.2d 1060. Prisons 315

Amendment to DNA statute requiring that offenders “paroled on or after” statute’s effective date submit DNA sample applied to defendant who was paroled on life sentence for murder prior to effective date of amendment; when read in its entirety, Act was intended to require all parolees to submit to DNA testing, with goal of creating extensive DNA database. Cannon v. South Carolina Dept. of Probation (S.C.App. 2004) 361 S.C. 425, 604 S.E.2d 709, rehearing denied, certiorari granted, reversed 371 S.C. 581, 641 S.E.2d 429. Pardon And Parole 42.1

**SECTION 23‑3‑625.** DNA samples of missing persons.

 Family members of a missing person may submit DNA samples to the State Law Enforcement Division (SLED). If the person is missing thirty days after a missing person report has been submitted to the Missing Person Information Center, SLED must conduct DNA identification, typing, and testing on the family members’ samples. SLED may, within its discretion, conduct DNA identification, typing, and testing on the family members’ samples prior to thirty days if SLED determines that such DNA identification, typing, and testing is necessary. If SLED does not have the technology necessary for a particular method of DNA identification, typing, or testing, SLED may submit the DNA samples to a Combined DNA Indexing System (CODIS) laboratory that has the appropriate technology. The results of the identification, typing, and testing must be entered into CODIS.

HISTORY: 2008 Act No. 413, Section 3.B, eff October 21, 2008.

Editor’s Note

2008 Act No. 413, Section 3.A provides as follows:

“This SECTION may be referred to and cited as the ‘Unidentified Human Remains DNA Database Act’.”

**SECTION 3.**A. This SECTION may be referred to and cited as the “Unidentified Human Remains DNA Database Act”.

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

**SECTION 23‑3‑630.** Persons authorized to take DNA sample; immunity from liability.

 (A) Only an appropriately trained person may take a sample from which DNA may be obtained.

 (B) A person taking a sample pursuant to this article is immune from liability if the sample was taken according to recognized procedures. However, no person is relieved from liability for negligence in the taking of a sample.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2004 Act No. 230, Section 2; 2008 Act No. 413, Section 4.D, eff January 1, 2009.

Editor’s Note

2008 Act No. 413, Section 4.A provides as follows:

“This SECTION may be cited as the ‘South Carolina Protection from Violence Against Women and Children Act’.”

2008 Act No. 413, Section 4.I provides as follows:

“This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division’s receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23‑3‑620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23‑3‑640.”

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

Effect of Amendment

The 2008 amendment, in subsection (A), substituted “an appropriately trained person” for “a correctional health nurse technician, physician, registered professional nurse, licensed practical nurse, laboratory technician, or other appropriately trained health care worker”; and, in subsection (B), in the first sentence deleted “medical” preceding “procedures”, and in the second sentence substituted “a sample” for “any blood sample”.

Library References

Searches and Seizures 78.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 31, 103 to 106.

**SECTION 23‑3‑635.** DNA identification, typing, and testing of unidentified person’s tissue and fluid samples.

 Upon notification by the Medical University of South Carolina or other facility preserving the body of an unidentified person that the body remains unidentified after thirty days, the State Law Enforcement Division (SLED) must conduct DNA identification, typing, and testing of the unidentified person’s tissue and fluid samples provided to SLED pursuant to Section 17‑7‑25. SLED may, within its discretion, conduct DNA identification, typing, and testing of the unidentified person’s tissue and fluid samples prior to thirty days if SLED determines that such DNA identification, typing, and testing is necessary. The results of the identification, typing, and testing must be entered into the Combined DNA Indexing System.

HISTORY: 2008 Act No. 413, Section 3.C, eff October 21, 2008.

Editor’s Note

2008 Act No. 413, Section 3.A provides as follows:

“This SECTION may be referred to and cited as the ‘Unidentified Human Remains DNA Database Act’.”

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

**SECTION 23‑3‑640.** Specifications, procedures, and equipment; use of DNA profiles; disposition of samples.

 (A) Samples must be taken and submitted to SLED pursuant to specifications and procedures developed by SLED in regulation. SLED must conduct DNA identification testing, typing, and analysis in accordance with regulations promulgated by the State Law Enforcement Division on samples received for the purpose of developing a DNA profile, and SLED must use procedures, equipment, supplies, and computer software that are compatible with those used by the Federal Bureau of Investigation.

 (B) The DNA profile on a sample may be used:

 (1) to develop a convicted offender database to identify suspects in otherwise nonsuspect cases;

 (2) to develop a population database when personal identifying information is removed;

 (3) to support identification research and protocol development of forensic DNA analysis methods;

 (4) to generate investigative leads in criminal investigations;

 (5) for quality control or quality assurance purposes, or both;

 (6) to assist in the recovery and identification of human remains from mass disasters;

 (7) for other humanitarian purposes including identification of missing persons.

 (C) The disposition of all samples obtained pursuant to this article is at the discretion of SLED.

 (D) SLED must securely store DNA samples. The samples are confidential and must remain in the custody of SLED or a private laboratory designated by SLED if the laboratory’s standards for confidentiality and security are at least as stringent as those of SLED.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2004 Act No. 230, Section 3.

CROSS REFERENCES

Informed consent required for genetic test, see Sections 38‑93‑20, 38‑93‑50.

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Searches and Seizures 78.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 31, 103 to 106.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law, Evidence. 43 S.C. L. Rev. 94, Autumn, 1991.

Attorney General’s Opinions

The Orangeburg Department of Public Safety may not collect DNA samples at the time of custodial arrest for any individuals outside the scope of those set forth under the provisions of the State Deoxyribonucleic Acid Identification Record Database Act. S.C. Op.Atty.Gen. (April 7, 2011) 2011 WL 1740752.

**SECTION 23‑3‑650.** Confidentiality of DNA record and profile; availability; wilful disclosure; penalty.

 (A) The DNA record and the results of a DNA profile of an individual provided under this article are confidential and must be securely stored, except that SLED must make available the results to federal, state, and local law enforcement agencies and to approved crime laboratories which serve these agencies and to the solicitor or the solicitor’s designee upon a written or electronic request and in furtherance of an official investigation of a criminal offense. These records and results of an individual also must be made available as required by a court order following a hearing directing SLED to release the record or results. However, SLED must not make the DNA record or the DNA profile available to any entity that is not a law enforcement agency unless instructed to do so by order of a court with competent jurisdiction.

 (B) To prevent duplications of DNA samples, SLED must coordinate with any law enforcement agency obtaining a DNA sample to determine whether a DNA sample from the person under lawful custodial arrest has been previously obtained and is in the State DNA Database.

 (C) A person who wilfully discloses in any manner individually identifiable DNA information contained in the State DNA Database to a person or agency not entitled to receive this information is guilty of a misdemeanor and, upon conviction, must be fined ten thousand dollars or three times the amount of any financial gain realized by the person, whichever is greater, or imprisoned not more than five years, or both.

 (D) A person who, without authorization, wilfully obtains individually identifiable DNA information from the State DNA Database is guilty of a misdemeanor and, upon conviction, must be fined ten thousand dollars or three times the amount of any financial gain realized by the person, whichever is greater, or imprisoned not more than five years, or both.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2004 Act No. 230, Section 4; 2008 Act No. 413, Section 4.E, eff January 1, 2009.

Editor’s Note

2008 Act No. 413, Section 4.A provides as follows:

“This SECTION may be cited as the ‘South Carolina Protection from Violence Against Women and Children Act’.”

2008 Act No. 413, Section 4.I provides as follows:

“This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division’s receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23‑3‑620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23‑3‑640.”

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

Effect of Amendment

The 2008 amendment, in subsection (A), in the first sentence substituted “record” for “sample”, in the second sentence substituted “records and results” for “results or the DNA sample” and “results” for “sample” and added the third sentence; added subsection (B)relating to preventing duplication of DNA samples; redesignated subsections (B) and (C) as subsections (C) and (D) and in both substituted “ten thousand dollars or three times the amount of any financial gain realized by the person, whichever is greater,” for “not more than five hundred dollars” and “five years” for “one year”.

CROSS REFERENCES

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Searches and Seizures 78.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 31, 103 to 106.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina Law, Evidence. 43 S.C. L. Rev. 94, Autumn, 1991.

**SECTION 23‑3‑660.** Expungement of DNA record; grounds for requesting.

 (A) A person whose DNA record or DNA profile has been included in the State DNA Database must have his DNA record and his DNA profile expunged if:

 (1) the charges pending against the person who has been arrested or ordered to submit a sample:

 (a) have been nolle prossed;

 (b) have been dismissed; or

 (c) have been reduced below the requirement for inclusion in the State DNA Database; or

 (2) the person has been found not guilty, or the person’s conviction has been reversed, set aside, or vacated.

 (B) The solicitor in the county in which the person was charged must notify SLED when the person becomes eligible to have his DNA record and DNA profile expunged. Upon receiving this notification, SLED must begin the expungement procedure.

 (C) SLED, at no cost to the person, must purge DNA and all other identifiable record information and the DNA profile from the State DNA Database if SLED receives either:

 (1) a document certified:

 (a) by a circuit court judge;

 (b) by a prosecuting agency; or

 (c) by a clerk of court;

that must be produced to the requestor at no charge within fourteen days after the request is made and after one of the events in subsection (A) has occurred, and no new trial has been ordered by a court of competent jurisdiction; or

 (2) a certified copy of the court order finding the person not guilty, or reversing, setting aside, or vacating the conviction.

 (D) The person’s entry in the State DNA Database shall not be removed if the person has another qualifying offense.

 (E) The jail intake officer, sheriff’s office employee, courthouse employee, or detention facility intake officer shall provide written notification to the person of his right to have his DNA record and DNA profile expunged and the procedure for the expungement pursuant to this section at the time that the person’s saliva or tissue sample is taken. The written notification must include that the person is eligible to have his DNA record and his DNA profile expunged at no cost to the person when:

 (1) the charges pending against the person are:

 (a) nolle prossed;

 (b) dismissed; or

 (c) reduced below the requirement for inclusion in the State DNA Database; or

 (2) when the person has been found not guilty, or the person’s conviction has been reversed, set aside, or vacated.

 (F) When SLED completes the expungement process, SLED must notify the person whose DNA record and DNA profile have been expunged and inform him, in writing, that the expungement process has been completed.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2008 Act No. 413, Section 4.F, eff January 1, 2009.

Editor’s Note

2008 Act No. 413, Section 4.A provides as follows:

“This SECTION may be cited as the ‘South Carolina Protection from Violence Against Women and Children Act’.”

2008 Act No. 413, Section 4.I provides as follows:

“This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division’s receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23‑3‑620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23‑3‑640.”

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

Effect of Amendment

The 2008 amendment rewrote this section.

CROSS REFERENCES

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Criminal Law 1226(5).

Westlaw Topic No. 110.

C.J.S. Criminal Law Section 1734.

**SECTION 23‑3‑670.** Cost of collection supplies for processing samples; processing fees.

 (A) The cost of collection supplies for processing a sample pursuant to this article must be paid by the general fund of the State. A person who is required to provide a sample pursuant to this article, upon conviction, pleading guilty or nolo contendere, or forfeiting bond, must pay a two hundred fifty dollar processing fee which may not be waived by the court. However:

 (1) if the person is incarcerated, the fee must be paid before the person is paroled or released from confinement and may be garnished from wages the person earns while incarcerated; and

 (2) if the person is not sentenced to a term of confinement, payment of the fee must be a condition of the person’s sentence and may be paid in installments if so ordered by the court.

 (B) The processing fee assessed pursuant to this section must be remitted to the general fund of the State and credited to the State Law Enforcement Division to offset the expenses SLED incurs in carrying out the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, Section 131A; 2008 Act No. 413, Section 4.G, eff January 1, 2009.

Editor’s Note

2008 Act No. 413, Section 4.A provides as follows:

“This SECTION may be cited as the ‘South Carolina Protection from Violence Against Women and Children Act’.”

2008 Act No. 413, Section 4.I provides as follows:

“This SECTION takes effect on January 1, 2009. However, the implementation of the procedures provided for in this SECTION is contingent upon the State Law Enforcement Division’s receipt of funds necessary to implement these provisions. Until the provisions of this SECTION are fully funded and executed, implementation of the provisions of this SECTION shall not prohibit the collection and testing of DNA samples by the methods allowed prior to the implementation of this SECTION from persons convicted, adjudicated delinquent, or on probation or parole for those crimes listed in Section 23‑3‑620. Upon this SECTION taking effect, a South Carolina law enforcement agency, which has in its possession any DNA samples that have been included in the State DNA Database, immediately must destroy and dispose of the DNA samples in accordance with regulations promulgated by SLED pursuant to Section 23‑3‑640.”

2008 Act No. 413, Section 7 provides as follows:

“The provisions of Section 17‑28‑350 become effective upon the signature of the Governor. All other provisions become effective January 1, 2009. The enactment of these provisions prior to the effective date indicates the intent of the General Assembly that statewide laws or practices shall exist to ensure additional procedures for post‑conviction DNA testing, and proper preservation of biological evidence connected to murder, rape, and nonnegligent homicide in order that application for available federal funds shall be made by the appropriate agencies and considered by the appropriate federal agencies prior to the effective date.”

Effect of Amendment

The 2008 amendment, in subsection (A), added the first sentence relating to the cost of collection supplies, in the second sentence added “, upon conviction, pleading guilty or nolo contendere, or forfeiting bond, and designated paragraphs (1) and (2) from the last two sentences of the subsection.

CROSS REFERENCES

State Law Enforcement Division, see Section 23‑3‑10 et seq.

Library References

Searches and Seizures 78.

Westlaw Topic No. 349.

C.J.S. Searches and Seizures Sections 31, 103 to 106.

RESEARCH REFERENCES

ALR Library

76 ALR 5th 239 , Validity, Construction, and Operation of State DNA Database Statutes.

NOTES OF DECISIONS

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Validity 1⁄2

1⁄2. Validity

Provision of South Carolina law requiring that $250 processing fee charged to prisoners for the collection of DNA samples from them must be paid before prisoner was paroled or released violated ex post facto clause. In re DNA Ex Post Facto Issues (C.A.4 (S.C.) 2009) 561 F.3d 294. Constitutional Law 2815; Constitutional Law 2823; Pardon And Parole 43; Prisons 417

Provision of South Carolina statute that required, in violation of ex post facto clause, that $250 processing fee charged to prisoners for the collection of DNA samples from them must be paid before prisoner was paroled or released violated ex post facto clause was severable from remaining constitutional provisions of the statute requiring the collection of DNA samples and the payment of the $250 fee; statute remained complete without the requirement that prisoners pay their fees before being granted parole or released from confinement, the purpose of defraying the cost of the implementation, operation, and maintenance of the DNA database could be accomplished without that requirement, especially considering that the statute allowed for the garnishment of the prisoners’ wages while the prisoners were incarcerated. In re DNA Ex Post Facto Issues (C.A.4 (S.C.) 2009) 561 F.3d 294. Statutes 1535(6)

1. In general

Taking of blood sample from inmate to store DNA under South Carolina’s DNA Database Act was not an unreasonable search and seizure. Griffin v. Padula, 2007, 518 F.Supp.2d 680, subsequent habeas corpus proceeding 2013 WL 2423990. Searches And Seizures 78

Prisoner’s challenge to South Carolina’s DNA Database Act as an ex post facto law and violation of Fourth Amendment was barred as successive habeas corpus petition without pre‑filing authorization. Griffin v. Padula, 2007, 518 F.Supp.2d 680, subsequent habeas corpus proceeding 2013 WL 2423990. Habeas Corpus 894.1

Prisoner’s challenge to South Carolina’s DNA Database Act as an ex post facto law appeared to be cognizable under habeas corpus statute; although prisoner was possibly seeking damages, he appeared most concerned about being confined in prison, after serving his time, simply because he was unable to pay the $250 fee for testing to place his DNA in database. Griffin v. Padula, 2007, 518 F.Supp.2d 680, subsequent habeas corpus proceeding 2013 WL 2423990. Habeas Corpus 537.1

Inmate’s grievance challenging statute requiring inmates convicted of certain crimes to submit DNA sample and statute requiring person providing DNA sample to pay $250 processing fee was properly dismissed by Administrative Law Judge (ALJ) for lack of jurisdiction; inmate’s counsel acknowledged at oral argument that inmate was challenging constitutionality of statutes, and that such a challenge was properly brought as declaratory judgment action in circuit court rather than through administrative grievance process. Slezak v. South Carolina Dept. of Corrections (S.C. 2004) 361 S.C. 327, 605 S.E.2d 506, rehearing denied, certiorari denied, certiorari denied 125 S.Ct. 2266, 544 U.S. 1033, 161 L.Ed.2d 1060. Prisons 315

2. Due process

Inmate received notice of new procedure for collecting processing fee from inmates required to submit a DNA sample under DNA Identification Record Database Act (DNA Act), under which procedure inmates receiving non‑wage deposits into their trust account would automatically have ten percent of those deposits retained to pay the fee, and, thus, inmate’s due process rights were not violated; prior to change in procedure, inmate knew he was required to submit DNA sample, pay a $250 fee, and knew that fee would be automatically deducted from his wages, as he signed form notifying him of this procedure as to wages, and Department of Corrections’ (DOC) memorandum outlining new procedure was sent to and received by prison warden and he, in turn, provided notice to all inmates regarding change in procedure as to non‑wages. Sanders v. S.C. Dept. of Corrections (S.C.App. 2008) 379 S.C. 411, 665 S.E.2d 231, rehearing denied, certiorari denied. Constitutional Law 4822; Costs 320

3. Ex post facto violations

ALJ had jurisdiction to hear inmate’s claim that the DNA Identification Record Database Act (DNA Act), which authorized collection of processing fee from inmates required to provide DNA sample, as applied to him, was an ex post facto violation that enhanced his sentence by assessing additional fees after his punishment was adjudicated, which claim was denied by Department of Corrections (DOC), as ex post facto claims were non‑collateral matters, and ALJ had jurisdiction to hear appeals from final decision of DOC in non‑collateral matters. Sanders v. S.C. Dept. of Corrections (S.C.App. 2008) 379 S.C. 411, 665 S.E.2d 231, rehearing denied, certiorari denied. Prisons 293

4. Recovery from inmate trust accounts

Provision of DNA Identification Record Database Act (DNA Act) governing payment of processing fee by inmates required to submit a DNA sample, which stated that fee “may be garnished from wages” inmate earned while incarcerated, did not restrict Department of Corrections (DOC) from recovering the fee from non‑wages voluntarily deposited in inmate’s trust account subsequent to notice of DOC’s new deduction procedure, under which inmates receiving non‑wage deposits into their trust account would automatically have ten percent of those deposits retained to pay the fee. Sanders v. S.C. Dept. of Corrections (S.C.App. 2008) 379 S.C. 411, 665 S.E.2d 231, rehearing denied, certiorari denied. Costs 320

**SECTION 23‑3‑680.** Promulgation of regulations.

 SLED shall promulgate regulations to carry out the provisions of this article.

HISTORY: 1994 Act No. 497, Part II, Section 131A.

CROSS REFERENCES

State Law Enforcement Division, see Section 23‑3‑10 et seq.

**SECTION 23‑3‑690.** Promulgation of regulations for processes regarding samples.

 SLED shall promulgate regulations for sample testing and analysis and for sample collection, identification, handling, transporting, and shipment which must be complied with by the agency having jurisdiction over the offender.

HISTORY: 1994 Act No. 497, Part II, Section 131A.

CROSS REFERENCES

State Law Enforcement Division, see Section 23‑3‑10 et seq.

**SECTION 23‑3‑700.** Implementation of article contingent on funding and regulations; implementation of DNA sample collection.

 Implementation of this article and the requirements under this article are contingent upon annual appropriations of sufficient funding and upon promulgation of regulations. However, the State Law Enforcement Division shall begin collecting DNA samples for analysis for crimes outlined in this article no later than July 30, 2000.

HISTORY: 1994 Act No. 497, Part II, Section 131B; 2000 Act No. 396, Section 5.

ARTICLE 10

Vulnerable Adults Investigations Unit

**SECTION 23‑3‑810.** Vulnerable Adults Investigations Unit established; duties.

 (A) The Vulnerable Adults Investigations Unit is established within the South Carolina Law Enforcement Division.

 (B) In accordance with Article 1, Chapter 35, Title 43, the unit shall receive and coordinate the referral of all reports of alleged abuse, neglect, or exploitation of vulnerable adults in facilities operated or contracted for operation by the Department of Mental Health or the Department of Disabilities and Special Needs. The unit shall establish a toll‑free number, which must be operated twenty‑four hours a day, seven days a week, to receive the reports.

 (C) The unit shall investigate or refer to appropriate law enforcement those reports in which there is reasonable suspicion of criminal conduct. The unit also shall investigate vulnerable adult fatalities as provided for in Article 5, Chapter 35, Title 43.

 (D) The unit shall refer those reports in which there is no reasonable suspicion of criminal conduct to the appropriate investigative entity for investigation in accordance with Article 1, Chapter 35, Title 43.

 (E) Upon conclusion of a criminal investigation of abuse, neglect, or exploitation of a vulnerable adult, the unit or other law enforcement shall refer the case to the appropriate prosecutor when further action is necessary.

 (F) The South Carolina Law Enforcement Division may develop policies, procedures, and memorandum of agreement with other agencies to be used in fulfilling the requirements of this article. However, the South Carolina Law Enforcement Division must not delegate its responsibility to investigate criminal reports of alleged abuse, neglect, and exploitation to the agencies, facilities, or entities that operate or contract for the operation of the facilities. Nothing in this article precludes the Department of Mental Health, the Department of Disabilities and Special Needs, or their contractors from performing administrative responsibilities in compliance with applicable state and federal requirements.

 (G) The definitions provided in Section 43‑35‑10 shall apply to this section.

HISTORY: 2006 Act No. 301, Section 1, eff May 23, 2006; 2010 Act No. 223, Section 12, eff June 7, 2010.

Effect of Amendment

The 2010 amendment in subsection (E) substituted “when” for “to determine if”.

CROSS REFERENCES

Investigations of deaths in facilities operated by the Department of Mental Health or the Department of Disabilities and Special Needs, death by natural causes in a veterans’ nursing home, see Section 43‑35‑520.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Governor Section 32, South Carolina Law Enforcement Division (SLED).

S.C. Jur. Governor Section 49.2, Vulnerable Adult Fatalities‑Investigation.

ARTICLE 12

National Crime Prevention and Privacy Compact

**SECTION 23‑3‑1010.** National Crime Prevention and Privacy Compact ratified; State Law Enforcement Division to administer.

 (A) In order to facilitate the authorized interstate exchange of criminal history information for noncriminal justice purposes including, but not limited to, background checks for the licensing and screening of employees and volunteers under the National Child Protection Act of 1993, and to implement the National Crime Prevention and Privacy Compact, 42 U.S.C. Section 14616, the General Assembly approves and ratifies the compact.

 (B) The State Law Enforcement Division is the repository of criminal history records for purposes of the compact and must do all things necessary or incidental to carry out the compact.

 (C) The Chief of SLED, or his designee, is the state’s compact officer and must administer the compact within the State. SLED may adopt rules and establish procedures for the cooperative exchange of criminal history records between the State and federal government and between the State and other party states for use in noncriminal justice cases.

 (D) The state’s ratification of the compact remains in effect until legislation is enacted which specifically renounces the compact pursuant to Article IX of 42 U.S.C. Section 14616.

 (E) The compact and this section do not affect or abridge the obligations and responsibilities of SLED under other provisions of law and do not alter or amend the manner, direct or otherwise, in which the public is afforded access to criminal history records under state law.

HISTORY: 2000 Act No. 387, Part II, Section 31A.

Library References

Criminal Law 1222.

Westlaw Topic No. 110.

C.J.S. Criminal Law Sections 323, 1724 to 1732.

ARTICLE 13

Verification of Nationality of Prisoners

**SECTION 23‑3‑1100.** Determination of lawfulness of prisoner’s presence in United States; notification of Department of Homeland Security of presence of unlawful alien; housing and maintenance expenses; transportation.

 (A) If a person is charged with a criminal offense and is confined for any period in a jail of the State, county, or municipality, or a jail operated by a regional jail authority, a reasonable effort shall be made to determine whether the confined person is an alien unlawfully present in the United States.

 (B) If the prisoner is an alien, the keeper of the jail or other officer must make a reasonable effort to verify whether the prisoner has been lawfully admitted to the United States or if the prisoner is unlawfully present in the United States. Verification must be made within seventy‑two hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined to be an alien unlawfully present in the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

 (C) Upon notification to the United States Department of Homeland Security pursuant to subsection (B), the keeper of the jail must account for daily expenses incurred for the housing, maintenance, transportation, and care of the prisoner who is an alien unlawfully present in the United States and must forward an invoice to the Department of Homeland Security for these expenses.

 (D) The keeper of the jail or other officer may securely transport the prisoner who is an alien unlawfully present in the United States to a federal facility in this State or to any other point of transfer into federal custody that is outside of the keeper of the jail or other officer’s jurisdiction. The keeper of the jail or other officer shall obtain judicial authorization before securely transporting a prisoner who is unlawfully present in the United States to a point of transfer that is outside of this State.

 (E) If a prisoner who is an alien unlawfully present in the United States completes the prisoner’s sentence of incarceration, the keeper of the jail or other officer shall notify the United States Department of Homeland Security and shall securely transport the prisoner to a federal facility in this State or to any other point of transfer into federal custody that is outside of the keeper of the jail or other officer’s jurisdiction. The keeper of the jail or other officer shall obtain judicial authorization before securely transporting a prisoner who is unlawfully present in the United States to a point of transfer that is outside of this State.

 (F) Nothing in this section shall be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release. However, pursuant to the provisions of Section 17‑15‑30, a court setting bond shall consider whether the person charged is an alien unlawfully present in the United States.

 (G) The State Law Enforcement Division shall promulgate regulations to comply with the provisions of this section in accordance with the provisions of Chapter 23, Title 1.

 (H) In enforcing the terms of this section, no state officer shall attempt to make an independent judgment of an alien’s immigration status. State officials must verify an alien’s status with the federal government in accordance with 8 U.S.C. Section 1373(c).

HISTORY: 2008 Act No. 280, Section 11, eff June 4, 2008; 2011 Act No. 69, Section 7, eff January 1, 2012.

Effect of Amendment

The 2011 amendment in subsection (C), inserted “transportation,”; inserted new subsections (D) and (E); redesignated former subsections (D) to (F) as subsections (F) to (H); and made other nonsubstantive changes.

RESEARCH REFERENCES

ALR Library

174 ALR 549 , Interest Necessary to Maintenance of Declaratory Determination of Validity of Statute or Ordinance.

LAW REVIEW AND JOURNAL COMMENTARIES

Preemption and United States v. South Carolina: Undermining our nation’s border and the Constitution’s border between State and Federal sovereignty. Honorable George E. “Chip” Campsen, III, 65 S.C. L. Rev. 901 (Summer 2014).

United States Supreme Court Annotations

Deportation or removal, federal law preempts most of Arizona immigration law, see Arizona v. U.S., 2012, 132 S.Ct. 2492, 567 U.S. 387, 183 L.Ed.2d 351, on remand 689 F.3d 1132. Aliens, Immigration, and Citizenship 103; States 18.43

Attorney General’s Opinions

Section 6 of 2011 Act No. 69 does not permit officers to prolong the original stop based upon the officer’s inquiry into or based on a determination, suspicion, or admission concerning a person’s immigration status. S.C. Op.Atty.Gen. (March 3, 2014) 2014 WL 2538227.

Section 7 of 2011 Act No. 69 does not authorize prolonging the detention of a person in jail or prison simply to determine the person’s immigration status. S.C. Op.Atty.Gen. (March 3, 2014) 2014 WL 2538227.

Notes of Decisions

Standing 1

1. Standing

Various immigration rights groups and individuals lacked standing to bring their constitutional challenge to section of newly‑adopted South Carolina immigration law that required verification of immigration status of any person incarcerated or detained in jail facility and provided for potential delivery of incarcerated persons to federal facilities if they were determined to be unlawfully present in United States, even though section appeared to expose some plaintiffs to concrete and particularized potential injury by operation of other sections that could have led to plaintiffs being arrested and detained at local or state prison facilities, where, in light of preliminarily injunction to enjoin enforcement of those other sections, injuries stemming from verification section were too remote and speculative. U.S. v. South Carolina, 2011, 840 F.Supp.2d 898, modified in part 906 F.Supp.2d 463, affirmed 720 F.3d 518. Constitutional Law 695

ARTICLE 14

Electronic Monitoring System

**SECTION 23‑3‑1200.** SLED electronic monitoring system; collection, storage and use of information.

 (A) The State Law Enforcement Division (SLED) shall serve as the statewide, central repository for log information submitted electronically in real time to the data collection system pursuant to Section 44‑53‑398(D)(2) and transferred to SLED in order to monitor the sales and purchases of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine. SLED shall maintain the information received from the data collection system in SLED’s electronic monitoring system and must not be charged any vendor or other fees associated with the requirements of this chapter.

 (B) The data collection system upon which SLED’s electronic monitoring system is based must have the capability to:

 (1) calculate state and federal sales and purchase limitations for ephedrine, pseudoephedrine, and phenylpropanolamine;

 (2) match similar purchaser identification information;

 (3) alert retailers of potential illegal sales and purchases;

 (4) allow a retailer to override an alert of a potential illegal sale or purchase;

 (5) receive ephedrine, pseudoephedrine, and phenylpropanolamine sales data from retailers in the format in which the data was submitted so that retailers are not required to use any one particular vendor’s product to comply with the requirements of this section and Section 44‑53‑398(D)(2); and

 (6) interface with existing and future operational systems used by pharmacies at no cost to these pharmacies.

 (C) The data transmitted to the data collection system must be recorded in real time and the storage of this data must be housed by an information technology company operating under strict security standards that only may be accessed by local, state, or federal law enforcement authorized by SLED.

 (D)(1) No fee may be charged to retailers for access to the data collection system to which information is required to be transmitted pursuant to Section 44‑53‑398(D)(2), and no other fee or assessment may be imposed on retailers to fund program operations.

 (2) No fee may be charged to local, state, or federal law enforcement officers or entities for access to or retention, analysis, or use of information in the system concerning sales and purchases of nonprescription ephedrine, pseudoephedrine, and phenylpropanolamine that violate or potentially violate subsection 44‑53‑398(B)(1) or (2).

 (E) The information in SLED’s electronic monitoring system is confidential and not a public record as defined in Section 30‑4‑20(C) of the Freedom of Information Act. SLED only shall provide access to information maintained in the monitoring system to:

 (1) a local, state, or federal law enforcement official, a state attorney, or a United States attorney;

 (2) a local, state, or federal official who requests access to the monitoring system for the purpose of facilitating a product recall necessary for the protection of the public health and safety; and

 (3) the Board of Pharmacy for the purpose of investigating misconduct or a suspicious transaction committed by a retailer, a pharmacist, or an employee or agent of a pharmacy.

 (F) For purposes of this section “retailer” means a retail distributor, including a pharmacy, where ephedrine, pseudoephedrine, or phenylpropanolamine products are available for sale and does not include an employee or agent of a retailer.

 (G) The division shall promulgate regulations necessary to carry out its responsibilities under this section.

 (H) Nothing in this chapter prohibits SLED or any retailer from participating in other data submission, collection, or monitoring systems that monitor the sales and purchases of nonprescription products containing ephedrine, pseudoephedrine, or phenylpropanolamine.

HISTORY: 2010 Act No. 242, Section 2, eff July 1, 2010.

Editor’s Note

2010 Act No. 242, Section 3, provides as follows:

“Before January 1, 2011, the State Law Enforcement Division (SLED) shall enter into a memorandum of agreement with the National Association of Drug Diversion Investigators (NADDI), or a successor or other entity, to identify the roles and responsibilities of SLED and NADDI, or a successor or other entity, in carrying out the collection of sales and purchase data of ephedrine, pseudoephedrine, or phenylpropanolamine products and the transference of this information to the State Law Enforcement Division as provided for in this act. The memorandum must provide that the data and information in SLED’s electronic monitoring system is property of the State and that NADDI will provide SLED with that data and information at least four times a year in a format agreed to by SLED and NADDI and that is consistent with the most recent standards adopted by the American Society for Automation in Pharmacy (ASAP), as well as the most recent standards adopted by the National Information Exchange Model (NIEM).”

2010 Act No. 242, Section 4, provides as follows:

“The electronic logbook, central data collection system, and the State Law Enforcement Division electronic monitoring system required pursuant to Section 44‑53‑398 of the 1976 Code, as amended in Section 1 of this act, and Section 23‑3‑1200, as added by Section 2 of this act, must be implemented before January 1, 2011, and take effect upon this implementation.”

ARTICLE 16

Blue Alert Program

**SECTION 23‑3‑1400.** Blue alert program established; adoption of guidelines and procedures.

 (A) The “Blue Alert Program” is established within the South Carolina Law Enforcement Division (SLED). The purpose of the program is to assist law enforcement in the apprehension of a suspect who allegedly kills, seriously injures, or abducts a law enforcement officer by rapidly disseminating information regarding the suspect, and to reduce the suspect’s ability to flee thereby posing a serious threat to the safety of others.

 (B) SLED shall adopt guidelines and establish procedures for issuing a blue alert, including the rapid dissemination of information regarding a suspect through the use of the South Carolina Department of Transportation’s electronic traffic signage system and other law enforcement mechanisms. The Chief of SLED shall act as the program’s statewide coordinator.

 (C) To aid in hindering a suspect’s ability to flee and threaten citizens, communities, and other law enforcement personnel, SLED shall encourage and recruit television and radio broadcasters and other organizations to assist in the program by quickly disseminating information regarding the suspect.

 (D) A blue alert may be issued if:

 (1) a local, state, or federal law enforcement officer is killed, seriously injured, or abducted; and

 (2) the law enforcement agency of jurisdiction:

 (a) determines that a suspect poses a serious risk or threat to the public and other law enforcement personnel;

 (b) possesses sufficient information that could assist in locating the suspect, including information regarding the suspect’s vehicle; and

 (c) recommends the issuance of a blue alert to SLED.

 (E) SLED may issue a blue alert upon confirmation of the requirements of subsection (D). Upon issuance of a blue alert, information that could assist in locating a suspect may be displayed across the State via the South Carolina Department of Transportation’s electronic traffic signage system and other law enforcement mechanisms. Also, the information may be disseminated to organizations assisting with the program.

 (F) A blue alert may be canceled at the request of the law enforcement agency of jurisdiction or by the Chief of SLED when appropriate.

HISTORY: 2012 Act No. 124, Section 1, eff February 27, 2012.