**A** **BILL**

TO AMEND SECTION 23‑3‑540, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO ELECTRONIC MONITORING REQUIREMENTS FOR CERTAIN SEX OFFENDERS, SO AS TO BROADEN THE OFFENSES FOR WHICH A PERSON MAY BE ORDERED TO BE ELECTRONICALLY MONITORED TO INCLUDE ALL PERSONS REQUIRED TO REGISTER AS A SEX OFFENDER.

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

SECTION 1. Section 23‑3‑540 of the 1976 Code, as last amended by Act 289 of 2010, is further amended to read:

“Section 23‑3‑540. (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 committing or attempting a lewd act upon a child under sixteen, pursuant to Section 16‑15‑140, 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)~~ for which the person is required to register pursuant to this article, 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 committing or attempting a lewd act upon a child under sixteen, pursuant to Section 16‑15‑140, 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 committing or attempting a lewd act upon a child under sixteen, pursuant to Section 16‑15‑140, 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)~~ ~~engaging a child for sexual performance (Section 16‑3‑810);~~

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

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

~~(f)~~ ~~committing or attempting lewd act upon child under sixteen (Section 16‑15‑140);~~

~~(g)~~ ~~violations of Article 3, Chapter 15 of 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 16‑3‑930) 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 committing or attempting a lewd act upon a child under sixteen, pursuant to Section 16‑15‑140.

~~(I)~~(H) 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)~~(I) 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)~~(J) 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)~~(K) 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)~~(L) 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)~~(M) 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)~~(N) 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 of Title 16.

~~(P)~~(O) 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)~~(P) 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.”

SECTION 2. This act takes effect upon approval by the Governor.

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