**A** **BILL**

TO AMEND SECTION 23‑3‑430 OF THE 1976 CODE, RELATING TO THE SEX OFFENDER REGISTRY, TO GIVE FAMILY COURTS THE DISCRETION WHETHER TO REQUIRE A JUVENILE FOURTEEN YEARS OF AGE OR OLDER TO BE PLACED ON THE REGISTRY AND TO PROHIBIT FAMILY COURTS FROM PLACING A JUVENILE UNDER FOURTEEN YEARS OF AGE ON THE REGISTRY; AND TO AMEND SECTION 23‑3‑490(D) OF THE 1976 CODE, RELATING TO THE PUBLIC INSPECTION OF SEX OFFENDER REGISTRY RECORDS, TO LIMIT PUBLIC ACCESS TO VICTIMS, WITNESSES, SCHOOLS, CHILDCARE FACILITIES, AND OTHER BUSINESSES THAT PRIMARILY SERVE CHILDREN, WOMEN, OR VULNERABLE ADULTS.

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

SECTION 1. Section 23‑3‑430 of the 1976 Code is amended by adding new subsections at the end to read:

“(H) Notwithstanding subsection (A), a juvenile fourteen years of age or older who has pled guilty or nolo contendere, or who has been adjudicated delinquent by a family court in this State, for an offense described above may be required to register pursuant to the provisions of this article. The family court shall use its discretion to determine whether a juvenile is placed on the sex offender registry and required to comply with registration requirements. In making this determination, the court shall consider:

(1) the likelihood the juvenile will reoffend, based on a psychosexual assessment by the Department of Juvenile Justice;

(2) the age of the juvenile at the time of the offense;

(3) mitigating factors, including an assessment of the juvenile’s history of sexual or physical victimization and other adverse childhood experiences;

(4) aggravating factors, including, but not limited to, the use of force, weapons, or other forms of violence; and

(5) other factors the court considers relevant.

(I) Nothing in this section prohibits the juvenile or the State from seeking a psychosexual evaluation to present to the court in addition to the required evaluation completed by the Department of Juvenile Justice.

(J) A juvenile under the age of fourteen must not be required to register as a sex offender pursuant to the provisions of this article.

(K) Notwithstanding any other provision in this section:

(1) a juvenile fourteen years of age or older who has pled guilty or nolo contendere, or who has been adjudicated delinquent by a family court in this State, for any of the offenses listed in this subsection, or who has been adjudicated delinquent in a comparable court in the United States or a foreign country for a similar offense to an offense listed in this subsection, must register pursuant to the provisions of this article. This provision applies to the following offenses:

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

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

(c) criminal sexual conduct in the third degree pursuant to Section 16‑3‑654; and

(d) assaults with the intent to commit criminal sexual conduct in the first, second, or third degree pursuant to Section 16‑3‑656; and

(2) a juvenile fourteen years of age or older who has pled guilty or nolo contendere, or who has been adjudicated delinquent by a court of competent jurisdiction, for an offense for which the juvenile was required to register in the state where the adjudication occurred, must register pursuant to the provisions of this article.

(L) If the family court orders the juvenile to be placed on the sex offender registry, then the family court shall also determine if the information shall be made available for the public or if the information shall only be made available upon request to the victims of or witnesses to the offense, public or private schools, childcare facilities as defined in Section 63‑13‑20, or businesses or organizations that primarily serve children, women, or vulnerable adults as defined in Section 43‑35‑10(11).”

SECTION 2. Section 23‑3‑430(A) of the 1976 Code is amended to read:

“Section 23‑3‑430. (A) ~~Any~~ A 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~~ is required to register pursuant to the provisions of this article. A person who has been found not guilty by reason of insanity ~~shall~~ must 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. A person who is required to register in South Carolina for any out-of-state offense shall be subject to all of the same requirements set forth in this chapter as the person would be subject to for committing the offense in this State.”

SECTION 3. Section 23‑3‑490(D) of the 1976 Code is amended to read:

“(D)(1) For purposes of this article, information ~~on~~ about a ~~person~~ juvenile adjudicated delinquent in family court for an offense listed in Section 23‑3‑430 must not be made available to the public ~~in accordance with the following provisions:~~, except as provided in items (2) and (3).

~~(1)~~(2) If a ~~person~~ juvenile 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); and

(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)~~(3) Information ~~shall~~ must 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, childcare facilities as defined in Section 63‑13‑20, or 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:~~ other offense for which the person is required to register in accordance with this article.

~~(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)~~(4) Nothing in this section ~~shall prohibit~~ prohibits the dissemination of all registry information to law enforcement.”

SECTION 4. The repeal or amendment by this act of any law, whether temporary, permanent, civil, or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon or alter, discharge, release, or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

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