



South Carolina Law Enforcement Division

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SLED UPDATED GUIDANCE ON JUVENILE SEX OFFENDERS JULY 27, 2022

On May 23, 2022, Act 221 (formerly House Bill 4065) went into effect. This law affords all sex offenders in South Carolina a mechanism to seek removal from South Carolina's lifetime sex offender registry in response to the South Carolina Supreme Court's decision in *Powell v. Keel*. This bill creates state tiers for offenders and provides reasonable avenues for removal based on the offender's applicable state tier. This bill also overhauls the treatment of juvenile sex offenders.

S.C. Code Ann. § 23-3-436 governs the registration of juvenile sex offenders. It provides that **“a child who is fourteen years of age or older and who has been adjudicated delinquent by a family court in this State for any Tier III offense is required to register in accordance with this article.”**

***The following are Tier III offenses:

- (a) criminal sexual conduct in the first degree (Section 16-3-652);
- (b) criminal sexual conduct with minors, first degree (Section 16-3-655(A));
- (c) criminal sexual conduct: assaults with intent to commit (Section 16-3-656);
- (d) kidnapping (Section 16-3-910) of a person under eighteen years of age except when the offense is committed by a parent;
- (e) criminal sexual conduct when the victim is a spouse (Section 16-3-658);
- (f) sexual battery of a spouse (Section 16-3-615); or
- (g) any offense listed or described in this section committed after the offender becomes a Tier I or Tier II offender.

In addition, S.C. Code Ann. § 23-3-436(B) provides that a “child who is fourteen years of age or older and has been adjudicated delinquent of any other offense listed in Section 23-3-430(C) may be required, in the discretion of the family court, to register in accordance with this article. In making this determination, the court shall consider:

- (1) the likelihood the juvenile will reoffend, based on a psychosexual risk assessment and evaluation by a licensed clinical psychologist or licensed psychiatrist employed by the Department of Juvenile Justice. The Circuit Solicitor's Office, Attorney General's Office, or the juvenile also may have an independent psychosexual risk assessment evaluation by a licensed psychologist or psychiatrist;
- (2) the age of the juvenile at the time of the offense and adjudication;
- (3) mitigating factors;
- (4) aggravating factors including, but not limited to, age of victim, use of force, or use of weapons;
- (5) prior adjudications; and
- (6) other factors the court considers relevant.”



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S.C. Code Ann. § 23-3-436(C) also provides that a “child **twelve years of age but less than fourteen years of age** who has been adjudicated delinquent by a family court in this State for any Tier III offense may be required to register in the discretion of the Family Court.

- (1) In making the determination, the court must consider:
 - (a) the likelihood the person will reoffend, based on a psychosexual risk assessment and evaluation by a licensed clinical psychologist or licensed psychiatrist as ordered by the court. The Circuit Solicitor’s Office, Attorney General’s Office, or the juvenile also may have an independent psychosexual risk assessment evaluation by a licensed psychologist or psychiatrist;
 - (b) the age of the juvenile at the time of the offense and adjudication;
 - (c) mitigating factors;
 - (d) aggravating factors including, but not limited to, age of victim, use of force, or use of weapons;
 - (e) prior adjudications; and
 - (f) other factors the court considers relevant.”

Out-of-State Juvenile Registration – With regard to out-of-state adjudications, S.C. Code Ann. § 23-3-436(D) indicates that a “**resident child who is adjudicated delinquent in any other state is required to register in this State subject to the requirements of the sentencing jurisdiction including duration of registration.**”

Duration and Frequency of Registration – If required to register, juvenile offenders are still required to register with the same frequency as before the passage of this bill, and this frequency is still dictated by the juvenile offender’s applicable federal SORNA tier – not the new state tiers. Specifically, Tier I and Tier II offenders are required to “register biannually for life”. All persons “classified as Tier III pursuant to Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA)” must register every ninety days. *See* S.C. Code Ann. § 23-3-460(A), (B). However, this lifetime registration requirement is now subject to the removal provisions set forth below.

Removal Process and Requirements – For **ALL** Juvenile Offenders adjudicated in South Carolina (regardless of State Tier):

The offender may file a request for termination of the requirement of registration with SLED, in a form and process established by SLED **after having been registered for AT LEAST FIFTEEN YEARS if the offender was required to register based on AN ADJUDICATION OF DELINQUENCY....**

SLED’s application form and process are attached and can be accessed on SLED’s website – www.sled.sc.gov. Currently, SLED is only able to accept paper applications, which must be mailed to:

Application for Removal from Sex Offender Registry
SLED SOR Unit
Post Office Box 21398
Columbia, SC 29221.

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The applicant must send the following:

1. Completed **SLED APPLICATION**. (Available on SLED’s website www.sled.sc.gov).
2. **2 sets of fingerprints** from the applicant for SLED to conduct a fingerprint-based state and a federal criminal history check on the applicant.

****For SLED to proceed, the applicant “must not have been convicted of failure to register within the previous ten years” and “must not have been convicted of any additional sexual offense after being placed on the registry.” See S.C. Code Ann. § 23-3-462(A)(4), (5).**

3. A filing fee of **\$250.00**, which can only be paid via money order or cashier’s check. (SLED does not accept personal checks).
4. Proof that the applicant **“successfully completed all sex offender treatment programs that were required.”** This proof must be official documentation acknowledging successful completion.

Upon receipt of all the above required documents and information, SLED will review the documentation provided by the offender, and will notify the original prosecuting agency for approval. If all the requirements of this section are verified, SLED shall, within one hundred twenty days of receipt of the request for termination, remove an offender’s name from the registry and notify the offender that the offender is no longer required to comply with the registry requirements of this article. **If it is determined that the offender has been convicted of any prohibiting offenses during the applicable period, has not substantially complied with this section, or an objection has been filed by the original prosecuting agency, SLED shall not remove the offender’s name from the sex offender registry and shall notify the offender that the offender has not been relieved of the provisions in this article.**

Additional Avenue of Removal for Juveniles –

S.C. Code Ann. § 23-3-437 provides an additional avenue for juvenile removal and states that a “juvenile convicted of an offense in family court who is required to register pursuant to the provisions of this article who has his record expunged, sealed, or receives a pardon must be removed from the registry by SLED.”

If this provision applies, provide SLED with official documentation regarding the expungement or pardon.

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Challenging SLED’s Determination –

THERE IS NO APPEAL TO SLED. Rather, an offender whose request for termination of registration requirements is denied by SLED is entitled to appeal the denial **to the general sessions court pursuant to the requirements of Section 23-3-463** for the county in which the conviction occurred if the conviction occurred within the State, or if not, the county in which the offender resides.

****However, South Carolina law also provides that “Individuals placed on the registry as a juvenile should petition the family court that adjudicated them delinquent.” As such, out-of-state juveniles may also petition to the family court where the adjudication occurred or where the offender resides.**

In accordance with S.C. Code Ann. § 23-3-463, the State of South Carolina must be named as the respondent to the action and shall be represented by the prosecution office that obtained the underlying conviction for which the offender is required to register, or, if the conviction occurred outside of the State, the Attorney General. All requirements of the Victim’s Rights Act, including reasonable notice, must be observed. SLED is not a party to such action and should not be named.

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

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

In addition, the court may direct that a qualified evaluator designated by the South Carolina Department of Mental Health conduct an evaluation whether the offender poses a foreseeable risk to reoffend. For any such evaluation, the court must order the offender to comply with all testing and assessments deemed necessary by the evaluator. After the evaluation by the qualified evaluator designated by the department, if the offender or the prosecutor seeks an independent evaluation by an independent qualified evaluator, then that evaluation must be completed within ninety days after receipt of the request by the department evaluator. The court may grant an extension upon the request of the independent qualified evaluator and a showing of extraordinary circumstances. Any qualified evaluator who will be submitted as an expert at a hearing on the motion must submit a written report available to both parties.

Re-applying After Denial –

If the offender is denied a termination request by SLED, the offender may petition again for termination with SLED **NO SOONER THAN FIVE YEARS AFTER THE PREVIOUS DENIAL**. If an offender is denied a termination request based on conviction of any additional sexual offenses or violent sexual offenses, the offender may not submit a petition to SLED for termination unless the subsequent conviction is overturned or a pardon granted.

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Other Avenues of Removal – For All Juvenile Offenders:

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

S.C. Code Ann. § 23-3-430(E) - SLED shall remove a person's name and any other information concerning that person from the sex offender registry immediately upon notification by the Attorney General that the person's adjudication, conviction, guilty plea, or plea of nolo contendere for an offense listed in subsection (C) was reversed, overturned, or vacated on appeal and a final judgment has been rendered.

S.C. Code Ann. § 23-3-430(F) - If an offender receives a pardon for the offense for which he was required to register, the offender must reregister as provided by Section 23-3-460 and may not be removed from the registry except:

- (1) as provided by the provisions of subsection (E); or
- (2) **if the pardon is based on a finding of not guilty specifically stated in the pardon.**

S.C. Code Ann. § 23-3-430(G) - If an offender files a petition for a writ of habeas corpus or a motion for a new trial pursuant to Rule 29(b), South Carolina Rules of Criminal Procedure, based on newly discovered evidence, the offender must reregister as provided by Section 23-3-460 and may not be removed from the registry except:

- (1) as provided by the provisions of subsection (E); or
- (2) (a) if the circuit court grants the offender's petition or motion and orders a new trial; and
(b) a verdict of acquittal is returned at the new trial or entered with the state's consent.