



ALAN WILSON
ATTORNEY GENERAL

February 14, 2012

Mark Keel, Chief
State Law Enforcement Division
P.O. Box 21398
Columbia, SC 29221-1398

Dear Chief Keel:

We received your letter requesting an opinion of this office as to whether Defendant is required to register as a sex offender. We reviewed court documents showing that Defendant was indicted in Charleston County in 2001 for, *inter alia*, two counts of Lewd Act Upon a Child, in violation of S.C. Code Ann. §16-15-140. The victims were under the age of sixteen. Defendant subsequently pled guilty on the Indictments to Exposure of Private Parts in Lewd and Lascivious Manner, in violation of §16-15-365. Defendant was sentenced to an aggregate six months imprisonment, with five years probation. As a condition of probation, Defendant was required to register as a sex offender under the South Carolina Sex Offender Registry Act (the "Act"). In 2002, Defendant was charged with violating this condition of probation by failing to register as a sex offender. Following a probation revocation hearing in 2003, the trial judge ("Probation Judge") ordered that Defendant's probation be continued. The Probation Judge further ordered that Defendant was not required to register as a sex offender as a condition of probation.

The Act is codified at §§23-3-400 *et seq.* The Act makes it mandatory for a convicted sex offender to register as a sex offender in South Carolina for life. Hendrix v. Taylor, 353 S.C. 542, 579 S.E.2d 320, 322 (2003); Duncan v. State, 391 S.C. 350, 705 S.E.2d 489, 491 (Ct. App. 2011); see §23-3-460. Pursuant to §23-3-450, a sex offender must register with the sheriff of the county where he resides. It is also the duty of the offender to provide such information to the Sheriff as is prescribed by SLED. *Id.* Failure to register or provide other notification as required by the Act is a criminal offense. Section 23-3-470; see State v. Latimore, 390 S.C. 88, 700 S.E.2d 456 (Ct. App. 2010).

Section 23-3-430 sets forth particular convictions which render an individual a "sex offender" under the Act. Under this provision:

(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:

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

Defendant pled guilty to two counts of Exposure of Private Parts in Lewd and Lascivious Manner, in violation of §16-15-365. The Probation Judge simply ordered that Defendant was not required to register as a sex offender as a condition of probation. See §24-21-430 [“The court . . . may at any time modify the conditions of probation . . .”]. Regardless of the Probation Judge’s order modifying Defendant’s requirement to register as a sex offender as a condition of probation, the Act separately requires Defendant to register as a sex offender. The offense for which Defendant pled guilty, §16-15-365, is found in Article 3, Chapter 15 of Title 16. Defendant’s conduct also involved minors. We therefore advise that Defendant must register for life under the Act. His failure to do so would subject him to criminal penalties.

If you have any further questions, please advise.

Very truly yours,



N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General