

May 30, 2008

Major Carlotta C. Stackhouse  
South Carolina Law Enforcement Division  
CJIS/Regulatory Services  
P. O. Box 21398  
Columbia, South Carolina 29221-1398

Dear Major Stackhouse:

In a letter to this office you referenced that SLED is working to become compliant with the Federal Sex Offender Registration and Notification Act (SORNA). One of the requirements of SORNA is the classification of certain sex offenders into Tier categories. More specifically, the SLED SOR section has requested assistance on the classification of Tier 3 offenders. Tier 3 offenders are defined by SORNA as:

a sex offender whose offense is punishable by imprisonment for more than one year  
and

(A) is comparable to or more severe than the following offenses, or an attempt or conspiracy to commit such an offense:

(i) aggravated sexual abuse or sexual abuse (as described in sections 2241 and 2242 of Title 18); or

(ii) abusive sexual contact (as described in section 2244 of Title 18) against a minor who has not attained the age of 13 years;

(B) involves kidnapping of a minor (unless committed by a parent or guardian); or

(C) occurs after the offender becomes a tier II sex offender.

You stated that in order to operate a state-wide sex offender registry for this State, a comprehensive list of applicable Tier 3 offenses for South Carolina needs to be identified. You have asked that this office advise SLED of the offenses that would be categorized as Tier 3 offenses according to State law.

I have reviewed State law in an attempt to identify those South Carolina offenses that are comparable to Tier 3 offenses as set forth above. Below is a list of those offenses. Please be advised that this is my best effort of a difficult process of identifying South Carolina offenses that are similar to the referenced federal offenses. If upon review you have any particular questions, please do not hesitate to contact me. Also, if you notice any statutes left out and believe that such should be included, please contact me and I will review such.

The offenses I have determined are similar to the referenced federal offenses are set forth as follows:

**A. Section 2241: Aggravated sexual abuse:**

CSC 1<sup>ST</sup> - §16-3-652(1)(a)(b) and (c)

CSC 2<sup>nd</sup> - §16-3-653(1)

CSC 3<sup>rd</sup> - §16-3-654(1)(a)  
(1)(b)

CSC w/minor 2<sup>nd</sup> - §16-3-655(B)(1) (when between 12 and 14 yrs. of age)  
§16-3-655(B)(2) (when between 14 and 15 yrs. of age)

Assault with intent to commit CSC - §16-3-656:

CSC 1<sup>st</sup> §16-3-652(1)(a)(b) and (c)

CSC2<sup>nd</sup> §16-3-653(1)

CSC3<sup>rd</sup> §16-3-654(1)(a)(b)

CSC w/minor 2<sup>nd</sup> §16-3-655(B)(1)(when betw. 12-14 yrs.)  
§16-3-655(B)(2)(when betw.14-15 yrs.)

Administering drug - § 44-53-370(f)(2)(3)(4)(5)(7)

**Section 2242: Sexual abuse:**

CSC 1<sup>st</sup> - § 16-3-652(1)(c)

CSC 2<sup>nd</sup> - § 16-3-653(1)

CSC 3<sup>rd</sup> - § 16-3-654(1)(a) and (b)

Assault with intent to commit CSC - § 16-3-656:

CSC 1<sup>st</sup> - § 16-3-652(1)(c)

CSC 2<sup>nd</sup> - § 16-3-653(1)

CSC 3<sup>rd</sup> - § 16-3-654(1)(a) and (b)

**Section 2244: Abusive sexual contact against a minor who has not attained the age of 13 years:**

CSC w/minor 1<sup>st</sup> - § 16-3-655(A)(1) - less than 11 years of age  
CSC w/minor 2<sup>nd</sup> - § 16-3-655 (B)(1) - 11-12 years of age  
Assault with intent to commit CSC w/minor - § 16-3-656:  
CSC w/minor 1<sup>st</sup> - § 16-3-655(A)(1) - less than 11 yrs. of age  
CSC w/minor 2<sup>nd</sup> - § 16-3-655 (B)(1) - 11-12 years of age

**B. Kidnapping of minor:**

Kidnapping of minor - § 16-3-910 (unless committed by parent or guardian)

**C. Sexual offender whose punishment is more than 1 year and occurs after becomes a Tier II sexual offender:**

**Tier II sex offender means a sex offender other than a tier III sex offender whose offense is punishable by imprisonment for more than 1 year and**

**A. is comparable to or more severe than the following offenses when, committed against a minor (or attempt or conspiracy to commit such against a minor)**

**(i) sex trafficking - §1591 - not applicable**

**(ii) coercion and enticement - §2422(b) - not applicable**

**(iii) transportation w/intent to engage in criminal sexual activity - §2423(a) - not applicable**

**(iv) abusive sexual contact - § 2244**

CSC w/minor 1<sup>st</sup> - §16-3-655 (A)(1) less than 11 yrs. of age

CSC w/minor 1<sup>st</sup> - §16-3-655(A)(2) less than 16 yrs. of age

CSC w/ minor 2<sup>nd</sup> - §16-3-655(B)(1) 11-14 yrs. of age

CSC w/minor 2<sup>nd</sup> - §16-3-655(B)(2) 14 less than 16 yrs. of age

Assault with intent to commit any of these offenses: § 16-3-656

**B. involves**

**(i) use of minor in sexual performance;**

**(ii) solicitation of a minor to practice prostitution; or**

**(iii) production or distribution of child pornography; or**

Permitting minor to engage in obscene activity - §16-15-335

Participation in the prostitution of a minor - §16-15-425

Participation in the preparation of obscene material (where a minor involved) - § 16-15-325

Promote prostitution of minor - §16-15-415

Produce/direct/promote sexual performance by a child - §16-3-820

Employment of minor to appear in nude - §16-15-387

Sexual exploitation of minor - §16-15-395 (1<sup>st</sup> degree)  
§16-15-405 (2<sup>nd</sup> degree)  
§16-15-410 (3<sup>rd</sup> degree)

Criminal solicitation of minor - §16-15-342

Engage child in sexual performance - §16-3-810

**C. Occurs after becomes a Tier I sex offender:**

**means a sex offender other than a Tier II or Tier III sex offender**

The term “sex offender” is defined by the applicable federal law as “an individual who was convicted of a sex offense.” It appears that any State sex offense provision would meet that qualification.

Again, after reviewing such, if there are any questions, please advise.

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General