

6914 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

September 20, 2000

The Honorable Gene Taylor
Sheriff, Anderson County
Post Office Box 5497
Anderson, South Carolina 29623

Re: Your Letter of April 24, 2000

Dear Sheriff Taylor:

In your letter, you reference the 1999 amendment to the Sex Offender Registry laws and the effect of the amendment on certain offenders convicted of Criminal Sexual Conduct with Minors, 2nd degree. You request that this Office provide an opinion "... as to whether or not this law is retroactive for offenders convicted and required to register under the old law, and do we apply the law that was in effect at the time of the offense or the law as it is written now."

First, all offenders convicted of Criminal Sexual Conduct with Minors, 2nd degree are required to register as sex offenders pursuant to S.C. Code §§ 23-3-400, et seq., regardless of their age or the circumstances surrounding their offense. There is, however, an exception to this requirement. Effective June 11, 1999 Section 23-3-430(C)(5) provides that "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 consensual sexual conduct, as contained in Section 16-3-655(3) provided the offender is eighteen years of age or less, or consensual sexual conduct between persons under sixteen years of age, the convicted person is not an offender and is not required to register" It should be noted that this exception was originally created by an amendment effective June 18, 1996. The most recent amendment merely narrowed the class of offenders able to claim the exception to those 18 years of age and under.

Without such a specific finding by the court at the criminal proceeding where the conviction occurred, any offender convicted of Criminal Sexual Conduct with Minor, 2nd

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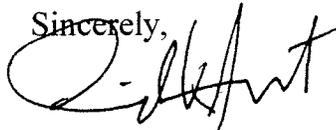
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degree would be required to register and would be subject to the criminal penalties should he fail to do so. The determination, therefore, to exclude an offender from the registry is in the hands of the court, not the sheriff's office charged with enforcing the criminal provisions of the statute.

Secondly, if the court has made such a finding, the offender would be entitled to the benefit of that finding, regardless of when his conviction occurred. On the other hand, the opposite holds true. Unless the court has made such a finding, the offender would be required to register, regardless of when his conviction occurred. As a practical matter, it is doubtful the court would have made a ruling regarding the exception prior to the existence of the exception in the statute.

I hope this has answered your concerns regarding the Sex Offender Registry. Should you have any additional questions or comments, please feel free to contact me.

Sincerely,



David K. Avant

Assistant Attorney General

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