

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/17/03

A Bill

Act 1265 of 2003
HOUSE BILL 2310

5 By: Representatives Pate, Martin
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For An Act To Be Entitled

9 AN ACT TO PROVIDE FOR JUVENILE SEX OFFENDER
10 ASSESSMENT, REGISTRATION AND DNA SAMPLES; AND FOR
11 OTHER PURPOSES.
12

Subtitle

14 AN ACT TO PROVIDE FOR JUVENILE SEX
15 OFFENDER ASSESSMENT, REGISTRATION AND
16 DNA SAMPLES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 9, Chapter 27, Subchapter 3 is
22 amended to add an additional section to read as follows:

23 9-27-356. Juvenile Sex Offender Assessment and Registration.

24 (a) If a juvenile is a adjudicated delinquent for any of the following
25 offenses the court shall order a Sex Offenders Screening and Risk Assessment:

26 (1) Rape, § 5-14-103;

27 (2) Sexual assault in the first degree, § 5-14-124;

28 (3) Sexual assault in the second degree, § 5-14-125;

29 (4) Incest, § 5-26-202; or

30 (5) Engaging children in sexually explicit conduct for use in
31 visual or print medium, § 5-27-303.

32 (b)(1) The court may order a Sex Offenders Screening and Risk
33 Assessment if a juvenile is adjudicated for any offense with an underlying
34 sexually motivated component.

35 (2) The court may require that a juvenile register as a sex
36 offender upon recommendation of the Sex Offender Assessment Committee and



1 following a hearing as set forth in subsection (e) of this section.

2 (c) The juvenile court judge may order reassessment of the Sex
3 Offenders Screening and Risk Assessment by the Sex Offender Assessment
4 Committee at any time while the court has jurisdiction over the juvenile.

5 (d) Following a sex offender assessment, the prosecutor may file a
6 motion to request that a juvenile register as a sex offender at anytime while
7 the court has jurisdiction of the delinquency case if a juvenile is found
8 delinquent for any of the offenses listed in subsection (a) of this section.

9 (e)(1) The court shall conduct a hearing within ninety (90) days of
10 the registration motion.

11 (2) The juvenile defendant shall be represented by counsel and
12 the court shall consider the following factors in making its decision to
13 require the juvenile to register as a delinquent sex offender:

14 (A) The seriousness of the offense;

15 (B) The protection of society;

16 (C) The level of planning and participation in the alleged
17 offense;

18 (D) The previous sex offending history of the juvenile,
19 including whether the juvenile has been adjudicated delinquent for prior sex
20 offenses;

21 (E) Whether there are facilities or programs available to
22 the court which are likely to rehabilitate the juvenile prior to the
23 expiration of the court's jurisdiction;

24 (F) The sex offender assessment and any other relevant
25 written reports and other materials relating to the juvenile's mental,
26 physical, educational, and social history; and

27 (G) Any other factors deemed relevant by the court.

28 (H) However, under no circumstances shall the exercise by
29 the juvenile of the right against self-incrimination, the right to a
30 adjudication hearing or appeal, the refusal to admit to an offense for which
31 he or she was adjudicated delinquent, or the refusal to admit to other
32 offenses in the assessment process be considered in the decision whether to
33 require registration.

34 (f)(1) The court shall make written findings on all the factors in
35 subsection (e) of this section.

36 (2) Upon a finding, by clear and convincing evidence, that a

1 juvenile should or should not be required to register as a sex offender, the
2 court shall enter its order.

3 (g) When the juvenile court judge orders a juvenile to register as a
4 sex offender, the juvenile court judge shall order either the Division of
5 Youth Services of the Department of Human Services or a juvenile probation
6 officer to complete the registration process by:

7 (1) Completing the sex offender registration form;

8 (2) Providing a copy of the sex offender registration order,
9 fact sheet, registration form, and the Juvenile Sex Offender Rights and
10 Responsibilities Form to the juvenile and the juvenile's parent, guardian, or
11 custodian and explaining this information to the juvenile and the juvenile's
12 parent, guardian, or custodian;

13 (3) Mailing a copy of the registration court order, fact sheets,
14 and registration form to the Arkansas Crime Information Center, Sex Offender
15 Registry Manager, One Capitol Mall 4D-200, LR, AR 72201;

16 (4) Providing local law enforcement agencies, where the juvenile
17 resides, a copy of the sex offender registration form; and

18 (5) Ensuring that copies of all documents are forwarded to the
19 court for placement in the court file.

20 (h) The juvenile may petition the court to have his or her name
21 removed from the sex offender register at anytime while the court has
22 jurisdiction over the juvenile or when the juvenile turns twenty-one (21)
23 years of age, whichever is later.

24 (i) The juvenile court judge shall order the juvenile's name removed
25 from the sex offender register upon proof, by a preponderance of the
26 evidence, that the juvenile does not pose a threat to the safety of others.

27 (j) If the court does not order the juvenile's name removed from the
28 sex offender register, the juvenile shall remain on the sex offender register
29 for ten (10) years from the last date on which the juvenile was adjudicated a
30 delinquent as an adult for a sex offense, or until the juvenile turns
31 twenty-one (21) years of age, whichever is longer.

32 (k) Once a juvenile is ordered to register as a sex offender, he or
33 she shall be subject to the registration requirements set forth in §§ 12-12-
34 904, 12-12-906, 12-12-908, 12-12-909, and 12-12-912.

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36 SECTION 2. Arkansas Code § 12-12-905 is amended to read as follows:

1 12-12-905. Applicability.

2 (a) The registration requirements of this subchapter apply to:

3 (1) A person who is adjudicated guilty on or after August 1,
4 1997, of a sex offense;

5 (2) A person who is serving a sentence of incarceration,
6 probation, parole, or other form of community supervision as a result of an
7 adjudication of guilt on August 1, 1997, for a sex offense;

8 (3) A person who is committed following an acquittal on or after
9 August 1, 1997, on the grounds of mental disease or defect for a sex offense;

10 (4) A person who is serving a commitment as a result of an
11 acquittal on August 1, 1997, on the grounds of mental disease or defect for a
12 sex offense; and

13 (5) A person who was required to be registered under the
14 Habitual Child Sex Offender Registration Act, former § 12-12-901 et seq.,
15 enacted by Acts 1987, No. 587, §§ 1-10, which was repealed by Acts 1997, No.
16 989, § 23~~+~~.

17 ~~(6) A juvenile who has been ordered to register by a juvenile~~
18 ~~court judge after an adjudication of delinquency on or after September 1,~~
19 ~~1999, of a sex offense; and~~

20 ~~(7) A juvenile who is serving an order of commitment, transfer~~
21 ~~of legal custody, probation, court approved voluntary service in the~~
22 ~~community, juvenile detention, residential detention, or other form of~~
23 ~~commitment as prescribed under § 9-27-330 after an adjudication of~~
24 ~~delinquency for a sex offense, on September 1, 1999, and after being ordered~~
25 ~~to register by the juvenile court judge having jurisdiction.~~

26 (b) A person who has been adjudicated guilty of a sex offense and
27 whose record of conviction will be expunged under the provisions of §§ 16-93-
28 301 - 16-93-303 is not relieved of the duty to register.

29 (c)(1) If the underlying conviction of the registrant is reversed,
30 vacated, or set aside, or if the registrant is pardoned, the registrant is
31 relieved from the duty to register.

32 (2) Registration shall cease upon the receipt and verification
33 by the Arkansas Crime Information Center of documentation from the court
34 verifying the fact that the conviction has been reversed, vacated, or set
35 aside or from the Governor's office that the Governor has pardoned the
36 registrant.

1
2 SECTION 4. Arkansas Code § 12-12-906(a), concerning the duty to
3 register as a sex offender, is amended to read as follows:

4 (a)(1)(A) At the time of adjudication of guilt, the sentencing court
5 shall enter on the judgment and commitment or judgment and disposition form
6 whether or not the offender is required to register as a sex offender.

7 (B) The Department of Correction shall ensure that
8 offenders received for incarceration complete the registration form prepared
9 by the Director of the Arkansas Crime Information Center pursuant to § 12-12-
10 908.

11 (C) The Department of Community Correction shall ensure
12 that offenders placed on probation or another form of community supervision
13 complete the registration form.

14 (D) The Arkansas State Hospital shall ensure that the
15 registration form is completed for any offender found not guilty by reason of
16 insanity and shall arrange an evaluation by Sex Offender Screening and Risk
17 Assessment.

18 ~~(E) The Division of Youth Services of the Department of~~
19 ~~Human Services shall ensure that juveniles ordered by the juvenile court to~~
20 ~~register complete the registration form.~~

21 (2)(A) A sex offender moving to or returning to this state from
22 another jurisdiction shall register with the local law enforcement agency
23 having jurisdiction no later than thirty (30) days after August 1, 1997, or
24 thirty (30) days after the offender establishes residency in a municipality
25 or county of this state, whichever is later.

26 (B)(i) All persons living in this state who would be
27 required to register as sex offenders in the jurisdiction in which they were
28 adjudicated guilty of a sex offense are required to register as sex offenders
29 in this state whether living, working, or attending school or other training
30 in Arkansas.

31 (ii) Nonresident workers or students who enter the
32 state for fourteen (14) or more consecutive days to work or study or who
33 enter the state for an aggregate of thirty (30) days or more a year are
34 required to register in compliance with 64 Fed. Reg. 585 2nd, as it existed
35 on ~~January 1, 2001~~ March 1, 2003.

36 (C) A sex offender sentenced and required to register

1 outside of Arkansas, ~~whether as an adult or a juvenile~~, must submit to
 2 reassessment by Sex Offender Screening and Risk Assessment, provide a
 3 deoxyribonucleic acid sample if a sample is not already accessible to the
 4 Arkansas State Crime Laboratory, and pay the mandatory fee of two hundred
 5 fifty dollars (\$250) to the DNA Detection Fund established under § 12-12-1101
 6 et seq.

7 ~~(3)(A) After September 1, 1999, a juvenile judge shall require a~~
 8 ~~sex offender to submit at the time of adjudication of a sex offense to an~~
 9 ~~assessment by Sex Offender Screening and Risk Assessment.~~

10 ~~(B)(i) Sex Offender Screening and Risk Assessment shall~~
 11 ~~submit its assessment and recommendation to the juvenile judge, and the~~
 12 ~~juvenile judge may order registration by so indicating on the proper form.~~

13 ~~(ii)(a) Upon the decision by the juvenile judge to~~
 14 ~~order registration by the juvenile, the juvenile shall comply with all the~~
 15 ~~provisions of this subchapter.~~

16 ~~(b) The juvenile court judge may order~~
 17 ~~reassessment by Sex Offender Screening and Risk Assessment at any time during~~
 18 ~~the juvenile judge's jurisdiction over the juvenile.~~

19 ~~(c) The juvenile court judge may order~~
 20 ~~registration of the juvenile adjudicated delinquent of a sex offense at any~~
 21 ~~time during the juvenile judge's jurisdiction over the juvenile.~~

22
 23 *SECTION 5.* Arkansas Code Title 9, Chapter 27, Subchapter 3 is amended
 24 to add an additional section to read as follows:

25 9-27-356. Deoxyribonucleic acid (DNA) samples.

26 (a) A person who is adjudicated delinquent for the following offenses
 27 shall have a deoxyribonucleic acid (DNA) sample drawn:

28 (1) Rape, § 5-14-103;

29 (2) Sexual assault in the first degree, § 5-14-124;

30 (3) Sexual assault in the second degree, § 5-14-125;

31 (4) Incest, § 5-26-202;

32 (5) Capital murder, § 5-10-101;

33 (6) Murder in the first degree, §5-10-102;

34 (7) Murder in the second degree, § 5-10-103;

35 (8) Kidnapping, § 5-12-102;

36 (9) Aggravated robbery, § 5-12-103; and

1 (10) Terroristic Act, § 5-13-310.

2 (b) The court shall order a two hundred fifty dollar (\$250) fine
3 unless the court finds that the fine would cause an undue hardship.

4 (c)(1) A juvenile adjudicated delinquent for one of the offenses
5 listed in subsection (a) of this section shall have a deoxyribonucleic acid
6 (DNA) sample drawn upon intake at a juvenile detention facility or intake at
7 a Division of Youth Services of the Department of Human Services facility.

8 (2) If the juvenile is not placed in a facility, the juvenile
9 probation officer to which the juvenile is assigned shall ensure that the
10 deoxyribonucleic acid (DNA) sample is drawn.

11 (d) All deoxyribonucleic acid (DNA) samples taken under this section
12 shall be taken in accordance with regulations promulgated by the State Crime
13 Laboratory.

14
15 SECTION 6. Arkansas Code 12-12-1109 is amended to read as follows:
16 12-12-1109. DNA sample required upon adjudication of guilt.

17 (a) Adjudication of guilt. A person who is adjudicated guilty ~~or~~
18 ~~adjudicated delinquent~~ for a sex offense, a violent offense, a residential or
19 commercial burglary under § 5-39-201(a) or (b), or a repeat offense on or
20 after August 1, 1997, shall have a deoxyribonucleic acid (DNA) sample drawn
21 as follows:

22 (1)(A) A person who is adjudicated guilty ~~or adjudicated~~
23 ~~delinquent~~ for a sex offense, a violent offense, a residential or commercial
24 burglary under § 5-39-201(a) or (b), or repeat offense and sentenced to a
25 term of confinement for that sex offense, violent offense, residential or
26 commercial burglary under § 5-39-201(a) or (b), or repeat offense shall have
27 a deoxyribonucleic acid (DNA) sample drawn upon intake into prison, jail,
28 ~~juvenile detention facility~~ or institution.

29 (B) If the person is already confined at the time of
30 sentencing, the person shall have a deoxyribonucleic acid (DNA) sample drawn
31 immediately after the sentencing;

32 (2) A person who is adjudicated guilty ~~or adjudicated delinquent~~
33 for a sex offense, a violent offense, a residential or commercial burglary
34 under § 5-39-201(a) or (b), or a repeat offense shall have a deoxyribonucleic
35 acid (DNA) sample drawn as a condition of any sentence in which disposition
36 will not involve an intake into a prison, jail, ~~juvenile detention facility~~,

1 or any other detention facility or institution;

2 (3) A person who is acquitted on the grounds of mental disease
3 or defect of the commission of a sex offense, a violent offense, a
4 residential or commercial burglary under § 5-39-201(a) or (b), or a repeat
5 offense and committed to an institution or other facility shall have a
6 deoxyribonucleic acid (DNA) sample drawn upon intake to that institution or
7 other facility; and

8 (4) Under no circumstances shall a person who is adjudicated
9 guilty ~~or adjudicated delinquent~~ for a sex offense, a violent offense, a
10 residential or commercial burglary under § 5-39-201(a) or (b), or a repeat
11 offense be released in any manner after such disposition unless and until a
12 deoxyribonucleic acid (DNA) sample has been drawn.

13 (b) Adjudication of guilt before August 1, 1997. A person who is
14 adjudicated guilty ~~or adjudicated delinquent~~ for a sex offense, a violent
15 offense, a residential or commercial burglary under § 5-39-201(a) or (b), or
16 a repeat offense before August 1, 1997, and who is still serving a term of
17 confinement in connection therewith on August 1, 1997, shall not be released
18 in any manner prior to the expiration of his maximum term of confinement
19 unless and until a deoxyribonucleic acid (DNA) sample has been drawn.

20 (c) Supervision of deoxyribonucleic acid (DNA) samples. All
21 deoxyribonucleic acid (DNA) samples taken pursuant to this section shall be
22 taken in accordance with regulations promulgated by the State Crime
23 Laboratory in consultation with the Department of Correction, the Department
24 of Community Correction, the Department of Human Services, and the
25 Administrative Office of the Courts.

26
27 /s/ Pate, et al
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30 APPROVED: 4/10/2003
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