

**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.  
Act 4 of the 1st Extraordinary Session**

1 State of Arkansas

*As Engrossed: S4/5/06*

Call Item 22

2 85th General Assembly

# A Bill

3 First Extraordinary Session, 2006

HOUSE BILL 1005

4

5 By: Representatives D. Creekmore, S. Prater, McDaniel, Abernathy, Adcock, Anderson, Berry, Bolin,  
6 Borhauer, Boyd, Bradford, Bright, Burris, Childers, Clemons, Cook, Cooper, Cowling, Davenport,  
7 Dickinson, Dunn, Edwards, L. Evans, D. Evans, Everett, Fite, George, Glidewell, R. Green, Hardwick,  
8 Harris, J. Hutchinson, T. Hutchinson, J. Johnson, Kenney, Key, Kidd, Lamoureux, W. Lewellen, Mack,  
9 Mahony, Maloch, M. Martin, J. Martin, Matayo, Mathis, Medley, Nichols, Norton, Ormond, Overbey,  
10 Pace, Petrus, Pritchard, Pyle, Ragland, Rankin, Reep, Roebuck, Rogers, Rosenbaum, Sample, Saunders,  
11 Schulte, Scroggin, Sullivan, Walters, Wells, Willis, Wood, Wyatt

12 By: Senators Salmon, Laverty, Broadway, Altes, Baker, Capps, Faris, Glover, Higginbotham, Holt,  
13 Horn, J. Jeffress, G. Jeffress, Madison, Miller, T. Smith, J. Taylor, Trusty, Whitaker, Womack,  
14 Wooldridge, *Wilkinson*

15

16

17

## For An Act To Be Entitled

18

AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS  
19 CODE CONCERNING THE SEX OFFENDER REGISTRATION ACT  
20 OF 1997; TO PROVIDE FOR ELECTRONIC MONITORING OF  
21 SEXUALLY VIOLENT PREDATORS; TO EXPAND THE POWERS  
22 AND DUTIES OF THE DEPARTMENT OF COMMUNITY  
23 CORRECTION TO MONITOR CERTAIN SEX OFFENDERS; TO  
24 AUTHORIZE PERSONS WITH PRESCRIPTIVE AUTHORITY TO  
25 REQUEST CRIMINAL BACKGROUND CHECKS IN CERTAIN  
26 CASES; TO PROVIDE IMMUNITY FOR PROVIDING,  
27 REQUESTING, OR ACCESSING CERTAIN INFORMATION; AND  
28 FOR OTHER PURPOSES.

29

30

## Subtitle

31

THE CHILD PROTECTION ACT.

32

33

34

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

35



1 SECTION 1. Arkansas Code § 12-12-904 is amended to read as follows:  
 2 12-12-904. Failure to register or reregister - Failure to comply with  
 3 reporting requirements.

4 (a)(1)(A) A person who fails to register, reregister, or who fails to  
 5 report changes of address, employment, education, or training, or who refuses  
 6 to cooperate with the assessment process as required under this subchapter  
 7 shall be guilty of a Class ~~D~~ C felony.

8 (B)(i) A sex offender who fails or refuses to provide any  
 9 information necessary to update his or her registration file as required by §  
 10 12-12-906(b)(2) upon conviction is guilty of a Class C felony.

11 (ii) If a sex offender fails or refuses to provide  
 12 any information necessary to update his or her registration file as required  
 13 by § 12-12-906(b)(2), as soon as administratively feasible the Department of  
 14 Correction, the Department of Community Correction, the Arkansas State  
 15 Hospital, or the Department of Health and Human Services shall contact the  
 16 local law enforcement agency having jurisdiction to report the violation of  
 17 subdivision (a)(1)(B)(i) of this section.

18 (2) It is an affirmative defense to prosecution if:

19 ~~(A)(i) The delay in reporting a change in address is~~  
 20 ~~caused by~~ The person:

21 (i) Delayed reporting a change in address because  
 22 of:

23 (a) An eviction;

24 (b) A natural disaster; or

25 (c) Any other unforeseen circumstance; and

26 ~~(ii) The person provides~~ Provided the new address to  
 27 the Arkansas Crime Information Center in writing no later than five (5)  
 28 business days after the ~~offender~~ person establishes residency; or

29 (B) The person refuses to cooperate with the assessment on  
 30 the basis of the right to avoid self-incrimination.

31 (b) Any agency or official subject to reporting requirements under  
 32 this subchapter that knowingly fails to comply with such reporting  
 33 requirements shall be guilty of a Class B misdemeanor.

34  
 35 SECTION 2. Arkansas Code § 12-12-905 is amended to read as follows:  
 36 12-12-905. Applicability.

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

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

9 (3) A person who is ~~committed following an acquittal~~ acquitted  
10 on or after August 1, 1997, on the grounds of mental disease or defect for a  
11 sex offense, aggravated sex offense, or sexually violent offense;

12 (4) A person who is serving a commitment as a result of an  
13 acquittal on or after August 1, 1997, on the grounds of mental disease or  
14 defect for a sex offense, aggravated sex offense, or sexually violent  
15 offense; and

16 (5) A person who was required to be registered under the  
17 Habitual Child Sex Offender Registration Act, former § 12-12-901 et seq.,  
18 enacted by Acts 1987, No. 587, §§ 1-10, which was repealed by Acts 1997, No.  
19 989, § 23.

20 (b) A person who has been adjudicated guilty of a sex offense and  
21 whose record of conviction will be expunged under the provisions of §§ 16-93-  
22 301 - 16-93-303 is not relieved of the duty to register or reregister.

23 (c)(1) If the underlying conviction of the registrant is reversed,  
24 vacated, or set aside, or if the registrant is pardoned, the registrant is  
25 relieved from the duty to register or reregister.

26 (2) Registration or reregistration shall cease upon the receipt  
27 and verification by the Arkansas Crime Information Center of documentation  
28 from the court verifying the fact that the conviction has been reversed,  
29 vacated, or set aside or from the Governor's office that the Governor has  
30 pardoned the registrant.

31  
32 SECTION 3. Arkansas Code § 12-12-906 is amended to read as follows:

33 12-12-906. Duty to register or reregister generally - Review of  
34 requirements with offenders.

35 (a)(1)(A)(i) At the time of adjudication of guilt, the sentencing  
36 court shall enter on the judgment and commitment or judgment and disposition

1 form ~~whether or not~~ that the offender is required to register as a sex  
2 offender and shall indicate whether the:

3 (a) offense Offense is an aggravated sexual  
4 offense under § 12-12-903;

5 (b) Sex offender has been adjudicated guilty  
6 of a prior sex offense under a separate case number; or

7 (c) Sex offender has been classified as a  
8 sexually violent predator.

9 (ii) If the sentencing court finds the offender is  
10 required to register as a sex offender, then at the time of adjudication of  
11 guilt the sentencing court shall require the sex offender to complete the sex  
12 offender registration form prepared by the Director of the Arkansas Crime  
13 Information Center pursuant to § 12-12-908 and shall forward the completed  
14 sex offender registration form to the Arkansas Crime Information Center.

15 (B)(i) The Department of Correction shall ensure that a  
16 sex offender received for incarceration ~~completes~~ has completed the sex  
17 offender registration form prepared by the Director of the Arkansas Crime  
18 Information Center pursuant to § 12-12-908.

19 (ii) If the Department of Correction cannot confirm  
20 that the sex offender has completed the sex offender registration form, the  
21 Department of Correction shall require the sex offender to complete the sex  
22 offender registration form upon intake, release, or discharge.

23 (C)(i) The Department of Community Correction shall ensure  
24 that a sex offender placed on probation or another form of community  
25 supervision ~~completes~~ has completed the sex offender registration form.

26 (ii) If the Department of Community Correction  
27 cannot confirm that the sex offender has completed the sex offender  
28 registration form, the Department of Community Correction shall require the  
29 sex offender to complete the sex offender registration form upon intake,  
30 release, or discharge.

31 (D)(i) The Arkansas State Hospital shall ensure that the  
32 sex offender registration form ~~is~~ has been completed for any sex offender  
33 found not guilty by reason of insanity and shall arrange an evaluation by Sex  
34 Offender Screening and Risk Assessment.

35 (ii) If the Arkansas State Hospital cannot confirm  
36 that the sex offender has completed the sex offender registration form, the

1 Arkansas State Hospital shall ensure that the sex registration form is  
2 completed for the sex offender upon intake, release, or discharge.

3 (2)(A) A sex offender moving to or returning to this state from  
4 another jurisdiction shall register with the local law enforcement agency  
5 having jurisdiction within ~~thirty (30)~~ ten (10) days after the sex offender  
6 establishes residency in a municipality or county of this state.

7 (B)(i) All persons living in this state who would be  
8 required to register as sex offenders in the jurisdiction in which they were  
9 adjudicated guilty of a sex offense ~~are required to~~ shall register as sex  
10 offenders in this state whether living, working, or attending school or other  
11 training in Arkansas.

12 (ii) A nonresident worker or student who enters the  
13 state for fourteen (14) or more consecutive days to work or study or who  
14 enters the state for an aggregate of thirty (30) days or more a year ~~is~~  
15 ~~required to~~ shall register in compliance with 42 U.S.C. § 14071 et seq. and  
16 64 Fed. Reg. 572 et seq., as they existed on March 1, 2003.

17 (C) A sex offender sentenced and required to register  
18 outside of Arkansas ~~must~~ shall:

19 (i) ~~submit~~ Submit to ~~reassessment~~ assessment by Sex  
20 Offender Screening and Risk Assessment;

21 (ii) ~~provide~~ Provide a deoxyribonucleic acid (DNA)  
22 sample if a sample is not already accessible to the State Crime Laboratory;

23 and

24 (iii) ~~pay~~ Pay the mandatory fee of two hundred fifty  
25 dollars (\$250) to be deposited into the DNA Detection Fund established by §  
26 12-12-1119.

27 (b)(1) The registration file of a sex offender who is confined in a  
28 correctional facility or serving a commitment following acquittal on the  
29 grounds of mental disease or defect shall be inactive until the registration  
30 file is updated by the department responsible for supervision of the sex  
31 offender.

32 (2) Immediately prior to the release or discharge of a sex  
33 offender or immediately following a sex offender's escape or his or her  
34 absconding supervision, the Department of Correction, the Department of  
35 Community Correction, the Arkansas State Hospital, or the Department of  
36 Health and Human Services shall update the registration file of the sex

1 offender who is to be released or discharged or who has escaped or has  
2 absconded supervision.

3 (c)(1)(A) When registering a sex offender as provided in subsection  
4 (a) of this section, the sentencing court, the Department of Correction, the  
5 Department of Community Correction, the Arkansas State Hospital, the  
6 Department of Health and Human Services, or the local law enforcement agency  
7 having jurisdiction shall:

8 (i) Inform the sex offender of the duty to submit to  
9 assessment and to register and obtain the information required for  
10 registration as described in § 12-12-908;

11 (ii) Inform the sex offender that if the sex  
12 offender changes residency, the sex offender shall give the new address and  
13 place of employment, education, higher education, or training to the Arkansas  
14 Crime Information Center in writing no later than ten (10) days before the  
15 sex offender establishes residency or is temporarily domiciled at the new  
16 address;

17 (iii)(a) Inform the sex offender that if the sex  
18 offender changes residency to another state or enters another state for  
19 fourteen (14) consecutive days or more or for an aggregate of thirty (30)  
20 days or more a year, the sex offender must also register in that state  
21 regardless of permanent residency.

22 (b) The sex offender shall register the new  
23 address and place of employment, education, higher education, or training  
24 with the Arkansas Crime Information Center and with a designated law  
25 enforcement agency in the new state not later than ten (10) days before the  
26 sex offender establishes residence or is temporarily domiciled in the new  
27 state;

28 (iv) Obtain fingerprints and a photograph of the sex  
29 offender if these have not already been obtained in connection with the  
30 offense that triggered registration;

31 (v) Obtain a deoxyribonucleic acid (DNA) sample if  
32 one has not already been provided;

33 (vi) Require the sex offender to complete the entire  
34 registration process, including, but not limited to, requiring the sex  
35 offender to read and sign a form stating that the duty of the sex offender to  
36 register under this subchapter has been explained;

1 (vii) Inform the sex offender that if the sex  
2 offender's address changes due to an eviction, natural disaster, or any other  
3 unforeseen circumstance, the sex offender shall give the new address to the  
4 Arkansas Crime Information Center in writing no later than five (5) business  
5 days after the sex offender establishes residency; ~~and~~

6 (viii) Inform a sex offender who has been granted  
7 probation that failure to comply with the provisions of this subchapter may  
8 be grounds for revocation of the sex offender's probation; and

9 (ix) Inform a sex offender subject to lifetime  
10 registration under § 12-12-919 of the duty to reregister and obtain the  
11 information required for reregistration as described in subsection (g) of  
12 this section.

13 (B)(i) Any offender required to register as a sex offender  
14 must provide a deoxyribonucleic acid (DNA) sample, that is, a blood sample or  
15 saliva sample, upon registering if a sample has not already been provided to  
16 the State Crime Laboratory.

17 (ii) Any offender required to register as a sex  
18 offender who is entering the State of Arkansas must provide a  
19 deoxyribonucleic acid (DNA) sample, that is, a blood sample or saliva sample,  
20 upon registration and must pay the mandatory fee of two hundred fifty dollars  
21 (\$250) to be deposited into the DNA Detection Fund established by § 12-12-  
22 1119.

23 (2) When updating the registration file of a sex offender, the  
24 Department of Correction, the Department of Community Correction, the  
25 Arkansas State Hospital, or the Department of Health and Human Services  
26 shall:

27 (A) Review with the sex offender the duty to register and  
28 obtain current information required for registration as described in § 12-12-  
29 908;

30 (B) Review with the sex offender the requirement that if  
31 the sex offender changes address, the sex offender shall give the new address  
32 to the center in writing no later than ten (10) days before the sex offender  
33 establishes residency or is temporarily domiciled at the new address;

34 (C) Review with the sex offender the requirement that if  
35 the sex offender changes address to another state, the sex offender shall  
36 register the new address with the center and with a designated law

1 enforcement agency in the new state not later than ten (10) days before the  
2 sex offender establishes residence or is temporarily domiciled in the new  
3 state if the new state has a registration requirement;

4 (D) Require the sex offender to read and sign a form  
5 stating that the duty of the sex offender to register under this subchapter  
6 has been reviewed; ~~and~~

7 (E) Inform the sex offender that if the sex offender's  
8 address changes due to an eviction, natural disaster, or any other unforeseen  
9 circumstance, the sex offender shall give the new address to the center in  
10 writing no later than five (5) business days after the sex offender  
11 establishes residency;

12 (F) Review with the sex offender the consequences of  
13 failure to provide any information required by subdivision (b)(2) of this  
14 section;

15 (G) Inform a sex offender subject to lifetime registration  
16 under § 12-12-919 of the duty to reregister and obtain the information  
17 required for reregistration as described in subsection (g) of this section;  
18 and

19 (H) Review with a sex offender subject to lifetime  
20 registration under § 12-12-919 the consequences of failure to reregister  
21 under § 12-12-904.

22 (d) When registering or updating the registration file of a sexually  
23 violent predator, the sentencing court, the Department of Correction, the  
24 Department of Community Correction, the Arkansas State Hospital, the  
25 Department of Health and Human Services, or the local law enforcement agency  
26 having jurisdiction, in addition to the requirements of subdivision (c)(1) or  
27 (2) of this section, shall obtain documentation of any treatment received for  
28 the mental abnormality or personality disorder of the sexually violent  
29 predator.

30 (e) Any sex offender working, enrolled, or volunteering in a public or  
31 private elementary, secondary or postsecondary school, or institution of  
32 training shall notify the center of that status and shall register with the  
33 local law enforcement agency having jurisdiction over that campus.

34 (f)(1) An offender required to register pursuant to the provisions of  
35 this subchapter shall not change his or her name unless the change is:

36 (A) Incident to a change in the marital status of the sex



1 offender; or

2 (B) Necessary to effect the exercise of the religion of  
3 the sex offender.

4 (2) The change in the sex offender's name shall be reported to  
5 the Director of the Arkansas Crime Information Center within ~~thirty~~ ten  
6 (10) calendar days after the ~~official~~ change in name.

7 (3) A violation of this subsection shall constitute a Class ~~D~~ C  
8 felony.

9 (g)(1) Beginning on the effective date of this subdivision (g)(1), a  
10 sex offender subject to lifetime registration under § 12-12-919 shall report  
11 in person each year during his or her birth month and during the sixth month  
12 following his or her birth month to the local law enforcement agency having  
13 jurisdiction to reregister.

14 (2) The local law enforcement agency having jurisdiction may  
15 determine the appropriate times and days for reporting by the sex offender,  
16 and the determination shall be consistent with the reporting requirements of  
17 subdivision (g)(1) of this section.

18 (3) Reregistration shall include reporting any change to the  
19 following information concerning the sex offender:

20 (A) Name;

21 (B) Social security number;

22 (C) Age;

23 (D) Race;

24 (E) Gender;

25 (F) Date of birth;

26 (G) Height;

27 (H) Weight;

28 (I) Hair and eye color;

29 (J)(i) Address of any permanent residence and address of  
30 any current temporary residence within this state or out of this state,  
31 including a rural route address and a post office box.

32 (ii) A post office box shall not be provided in lieu  
33 of a physical residential address;

34 (K) Date and place of any employment;

35 (L) Vehicle make, model, color, and license tag number;

36 (M) Fingerprints; and

1                   (N) Photograph.

2                   (4) If the sex offender is enrolled or employed at an  
3 institution of higher education in this state, the sex offender shall also  
4 report to the local law enforcement agency having jurisdiction the name and  
5 address of each institution, including each campus attended, the county where  
6 each campus is located, and his or her enrollment or employment status.

7                   (5) If the place of residence of the sex offender is a motor  
8 vehicle, trailer, mobile home, modular home, or manufactured home, the sex  
9 offender shall report the following information concerning the motor vehicle,  
10 trailer, mobile home, modular home, or manufactured home:

11                   (A) Vehicle identification number;

12                   (B) License tag number;

13                   (C) Registration number; and

14                   (D) A description, including color scheme, of the motor  
15 vehicle, trailer, mobile home, modular home, or manufactured home.

16                   (6) If the place of residence of the sex offender is a vessel,  
17 live-aboard vessel, or houseboat, the sex offender shall report the following  
18 information concerning the vessel, live-aboard vessel, or houseboat:

19                   (A) Hull identification number;

20                   (B) Manufacturer's serial number;

21                   (C) Name of the vessel, live-aboard vessel, or houseboat;

22                   (D) Registration number; and

23                   (E) A description, including color scheme, of the vessel,  
24 live-aboard vessel, or houseboat.

25                   (h) Within three (3) days after reregistering a sex offender under  
26 subsection (g) of this section, the local law enforcement agency having  
27 jurisdiction shall report by written or electronic means all information  
28 obtained from or provided by the sex offender to the Arkansas Crime  
29 Information Center.

30  
31                   SECTION 4. Arkansas Code § 12-12-915 is amended to read as follows:

32                   12-12-915. Authority – Regulations.

33                   (a) The Department of Correction, the Department of Community  
34 Correction, and the Department of Health and Human Services may monitor a sex  
35 offender subject to electronic monitoring under § 12-12-923.

36                   (b) The Department of Correction, the Department of Community

1 Correction, the Department of Health and Human Services, the Administrative  
2 Office of the Courts, and the Arkansas Crime Information Center shall  
3 promulgate regulations to establish procedures for notifying offenders of the  
4 obligation to register pursuant to this subchapter and procedures for  
5 registration of those offenders.

6 (c)(1) The Department of Community Correction shall promulgate rules  
7 to establish procedures for monitoring a sex offender subject to electronic  
8 monitoring under § 12-12-923.

9 (2) The rules shall specify the agency that will supervise the  
10 electronic monitoring of a sex offender. In the event that the agencies  
11 cannot reach an agreement on which agency will supervise the electronic  
12 monitoring of a sex offender, the Governor shall be notified of the impasse  
13 and the Governor shall designate the responsible agency.

14  
15 SECTION 5. Arkansas Code § 12-12-917(b), pertaining to procedures for  
16 assessments of sex offenders or sexually violent predators, is amended to  
17 read as follows:

18 (b)(1) The committee shall cause an assessment to be conducted on a  
19 case-by-case basis of the public risk posed by a sex offender or sexually  
20 violent predator:

21 (A) Who is required to register under § 12-12-905 after  
22 August 1, 1997; and

23 (B) For whom the Arkansas Crime Information Center has no  
24 record of an assessment being done and a risk level established subsequent to  
25 August 1, 1997.

26 (2)(A)(i) ~~An adult offender sentenced to the Department of~~  
27 ~~Correction convicted of an offense described in 42 U.S.C. § 14071 et seq., as~~  
28 ~~they existed on March 1, 2003, or § 12-12-903(12) shall be assessed as the~~  
29 ~~necessary information becomes available after reception into the Department~~  
30 ~~of Correction, with the assessment being reviewed and updated as necessary~~  
31 ~~during incarceration.~~

32 (ii)(a) Subject to subdivision (c)(1) of this  
33 section, within thirty (30) days of an offender's adjudication of guilt the  
34 prosecuting attorney and any law enforcement agency shall furnish the file  
35 relating to the offender to Sex Offender Screening and Risk Assessment at the  
36 Department of Correction.

1                                    (b)(1) The prosecuting attorney shall make a  
 2 copy of any relevant records concerning the offender and shall forward the  
 3 copied relevant records to Sex Offender Screening and Risk Assessment at the  
 4 Department of Correction within thirty (30) days of the adjudication.

5                                    (2) The relevant records include, but  
 6 are not limited to:

7                                    (A) Arrest reports;

8                                    (B) Incident reports;

9                                    (C) Offender statements;

10                                   (D) Judgment and disposition

11 forms;

12                                   (E) Medical records;

13                                   (F) Witness statements; and

14                                   (G) Any record considered relevant

15 by the prosecuting attorney.

16                                   (B) A sex offender sentenced to life, life without parole,  
 17 or death shall be assessed only if the sex offender is being considered for  
 18 release through clemency.

19                                   ~~(3) The sentencing court shall require an adult offender~~  
 20 ~~adjudicated guilty but given a suspended imposition of sentence or probation~~  
 21 ~~to contact Sex Offender Screening and Risk Assessment at the Department of~~  
 22 ~~Correction in Pine Bluff within ten (10) days of adjudication to schedule an~~  
 23 ~~assessment to be conducted at a location determined by the Department of~~  
 24 ~~Correction in consultation with the sentencing court.~~

25                                   ~~(4)(A)(3)~~ A sex offender currently in the state who has not been  
 26 assessed and classified shall be identified by the ~~center~~ Arkansas Crime  
 27 Information Center.

28                                   ~~(B)(i) The Department of Community Correction shall~~  
 29 ~~notify, by certified mail or personal service, a sex offender under its~~  
 30 ~~supervision in a particular area to present himself or herself at a~~  
 31 ~~designated location for assessment.~~

32                                   ~~(ii)(a)(4)(A)~~ If a sex offender fails to appear for for  
 33 assessment, is shown by substantial evidence to have been deceptive,  
 34 aggressive, threatening, or disruptive to the point that Sex Offender  
 35 Screening and Risk Assessment staff cannot proceed with the assessment  
 36 process, or voluntarily terminates the assessment process after having been

1 advised of the potential consequences:

2 ~~(1)(i)~~ The sex offender shall be classified in risk level 3 or  
3 referred to the Sex Offender Assessment Committee as a risk level 4; and

4 ~~(2)(ii)~~ The parole or probation officer, if applicable, shall be  
5 notified.

6 ~~(b)(B)~~ A sex offender shall have immunity for  
7 a statement made by him or her in the course of assessment with respect to  
8 prior conduct under the immunity provisions of § 16-43-601 et seq.

9 ~~(e)(C)~~ Assessment personnel shall report  
10 ongoing ~~abuse~~ child maltreatment as required under the Arkansas Child  
11 Maltreatment Act, § 12-12-507 12-12-501 et seq.

12

13 SECTION 6. Arkansas Code § 12-12-922(b), pertaining to the procedure  
14 for challenging an assigned sex offender risk level, is amended to read as  
15 follows:

16 (b)(1)(A) A sex offender may challenge an assigned risk level by  
17 ~~requesting~~ submitting a written request for an administrative review.

18 (B) As part of ~~that~~ the request for an administrative  
19 review, the sex offender ~~shall be afforded the opportunity to receive~~ may  
20 request in writing copies of all documents generated by the examiners, a  
21 listing by document name and source of all documents that may be available  
22 from other agencies having custody of those documents, and a copy of the tape  
23 of the interview.

24 (2) The request for an administrative review shall be made in  
25 accordance with instructions provided on the risk level notification and  
26 ~~within thirty (30)~~ fifteen (15) days of receipt of the advisement of risk  
27 level notification to the sex offender by certified mail.

28 (3)(A) The basis of the request for administrative review shall  
29 be clearly stated and any documentary evidence attached.

30 (B) The bases for administrative review shall be that:

31 (i) The rules and procedures were not properly  
32 followed in reaching a decision on the risk level of the sex offender;

33 (ii) Documents or information not available at the  
34 time of assessment have a bearing on the risk that the sex offender poses to  
35 the community; or

36 (iii) The assessment is not supported by substantial

1 evidence.

2 (4)~~(A)~~ Unless a request for an administrative review is received  
3 by the committee within ~~thirty (30)~~ twenty (20) days of receipt of the  
4 advisement of risk level notification by the sex offender sent by certified  
5 mail or delivered by personal service, an offender fact sheet shall be made  
6 available to law enforcement so that community notification may commence.

7 ~~(B) If the sex offender fails to claim the certified mail  
8 in the time allowed by the United States Postal Service, a second certified  
9 letter will be sent or personal service will be attempted.~~

10 ~~(C) If the second attempt to notify the sex offender  
11 fails, community notification shall commence.~~

12 (5) If a request for an administrative review is received by the  
13 committee, law enforcement may make community notification only at the level  
14 immediately below the level upon which review has been requested.

15 (6)(A) A member of the committee shall conduct the review and  
16 respond within thirty (30) days of receiving a request for an administrative  
17 review.

18 (B) If additional time is needed to obtain facts, the  
19 committee shall notify the sex offender requesting the review.

20 (7)(A)(i) The findings of the administrative review shall be  
21 sent to the sex offender by certified mail. Community notification shall  
22 commence five (5) calendar days after the postmark of the advisement of the  
23 findings of the administrative review.

24 (ii) Upon receipt of the findings, the sex offender  
25 has thirty (30) days to file a petition under the Arkansas Administrative  
26 Procedure Act, § 25-15-201 et seq., for judicial review in the Pulaski County  
27 Circuit Court or in the circuit court of the county in which the sex offender  
28 resides or does business.

29 (B) The court shall refuse to hear any appeal of an  
30 assigned risk level by a sex offender unless the court finds that the  
31 administrative remedies available to the sex offender under this subsection  
32 have been exhausted.

33 (8)(A)(i) A copy of the petition for judicial review shall be  
34 served on the executive secretary of the committee in accordance with the  
35 Arkansas Rules of Civil Procedure.

36 (ii) When the petition for judicial review has been

1 served on the executive secretary of the committee, a record of the  
2 committee's findings and copies of all records in its possession shall be  
3 furnished by the committee to the court within thirty (30) days of service.

4 (B) The committee may ask the court to seal statements of  
5 victims, medical records, and other items that could place third parties at  
6 risk of harm.

7 (9) A ruling by the court on the petition for judicial review  
8 shall be considered a final judgment, ~~and community notification at the level~~  
9 ~~approved in the ruling shall commence.~~

10 ~~(10) Until a classification decision is finalized, notification~~  
11 ~~shall be made only at one (1) level lower than the disputed level.~~

12  
13 SECTION 7. Arkansas Code Title 12, Chapter 12, Subchapter 9 is amended  
14 to add an additional section to read as follows:

15 12-12-923. Electronic monitoring of sex offenders.

16 (a)(1) Upon release from incarceration, a sex offender determined to  
17 be a sexually violent predator whose crime was committed after the effective  
18 date of this section is subject to electronic monitoring for a period of not  
19 less than ten (10) years from the date of the sex offender's release.

20 (2) Within three (3) days after release from incarceration, a  
21 sex offender subject to electronic monitoring under subdivision (a)(1) of  
22 this section shall:

23 (A) Report to the agency responsible under § 12-12-915 for  
24 supervising the sex offender; and

25 (B) Submit to the placement of electronic monitoring  
26 equipment upon his or her body.

27 (b) The agency responsible under § 12-12-915 for supervising the sex  
28 offender subject to electronic monitoring shall:

29 (1) Use a system that actively monitors and identifies the sex  
30 offender's location and timely reports or records his or her presence near or  
31 within a crime scene or in a prohibited area or his or her departure from  
32 specified geographic limitations; and

33 (2) Contact the local law enforcement agency having jurisdiction  
34 as soon as administratively feasible if the sex offender is in a prohibited  
35 area.

36 (c)(1)(A) Unless a sex offender subject to electronic monitoring is

1 indigent, he or she is required to reimburse the supervising agency a  
2 reasonable fee to defray the supervision costs.

3 (B)(i)(a) A sex offender who claims to be indigent shall  
4 provide a completed certificate of indigency to the supervising agency.

5 (b) The supervising agency may at any time  
6 review and redetermine whether a sex offender is indigent.

7 (ii) The certificate of indigency shall be in a form  
8 approved by the supervising agency.

9 (iii) The certificate of indigency shall be executed  
10 under oath by the sex offender and shall state in bold print that a false  
11 statement is punishable as a Class D felony.

12 (2) The supervising agency shall determine the amount to be paid  
13 by a sex offender based on his or her financial means and ability to pay, but  
14 the amount shall not exceed fifteen dollars (\$15.00) per day.

15 (d) A sex offender subject to electronic monitoring who violates  
16 subdivision (a)(2) of this section upon conviction is guilty of a Class C  
17 felony.

18 (e)(1) A person who knowingly alters, tampers with, damages, or  
19 destroys any electronic monitoring equipment worn by a sexually violent  
20 predator pursuant to this section upon conviction is guilty of a Class C  
21 felony.

22 (2) Subdivision (e)(1) of this section does not apply to the  
23 owner of the electronic monitoring equipment or an agent of the owner  
24 performing ordinary maintenance or repairs to the electronic monitoring  
25 equipment.

26  
27 SECTION 8. Arkansas Code § 12-27-125(b), pertaining to the powers and  
28 duties of the Department of Community Correction, is amended to add an  
29 additional subdivision to read as follows:

30 (b) The Department of Community Correction shall have the following  
31 functions, powers, and duties, administered in accordance with the policies,  
32 rules, and regulations promulgated by the Board of Corrections:

33 (1) Shall assume management and control over all properties,  
34 both real and personal, facilities, books, records, equipment, supplies,  
35 materials, contracts, funds, moneys, equities, and all other properties  
36 belonging to the Arkansas Adult Probation Commission [abolished], and all



1 such properties deemed appropriate for transfer from the Department of  
2 Correction by the Board of Corrections;

3 (2)(A) Shall have management and control over all community  
4 punishment services existing on July 1, 1993, and created thereafter.

5 (B) The Department of Community Correction shall have  
6 management and control over all community correction facilities within the  
7 purview of the Board of Corrections existing on or created after July 1,  
8 1993;

9 (3) Shall employ such officers, employees, and agents and shall  
10 secure such offices and quarters as deemed necessary to discharge the  
11 functions of the Department of Community Correction, and which are  
12 appropriately funded;

13 (4) May establish and operate regional community punishment  
14 facilities, provided funds therefor have been authorized and appropriated by  
15 the General Assembly;

16 (5)(A) Has the authority to exercise all legally sanctioned  
17 supervision and appropriate care over all offenders referred with proper  
18 documentation from the circuit courts and all offenders transferred with  
19 proper documentation from the Department of Correction pursuant to policies  
20 established by the Board of Corrections and conditions set by the ~~Post-Prison~~  
21 ~~Transfer Board~~ Parole Board.

22 (B) Legal custody remains with the referring court or the  
23 Department of Correction;

24 (6) Shall administer the provision of probation services for  
25 offenders processed through circuit courts;

26 (7) Shall administer the provision of parole services in  
27 coordination with the ~~Post-Prison Transfer Board~~ Parole Board and in  
28 cooperation with the Department of Correction;

29 (8) Shall provide support services to the ~~Post-Prison Transfer~~  
30 ~~Board~~ Parole Board or its designated representatives as determined by the  
31 ~~Post-Prison Transfer Board~~ Parole Board;

32 (9) Shall assist the Board of Corrections in the furtherance of  
33 its goals by staffing the specific charges articulated for it through  
34 legislation and by the Board of Corrections;

35 (10) Shall conduct statewide public education and training to  
36 foster the provision of correctional supervision and service in community

1 settings;

2 (11) Shall provide technical assistance when necessary to all  
3 entities, programs, divisions, and agencies receiving assistance or clients  
4 through the Department of Community Correction;

5 (12) Shall facilitate the development of a comprehensive  
6 community correction plan through the provision of funding, criteria review,  
7 and ongoing evaluation to ensure the maintenance of quality in supervision  
8 and programming;

9 (13) May accept gifts, grants, and funds from both public and  
10 private sources with prior approval of the Board of Corrections;

11 (14) Shall establish minimum standards for case loads, programs,  
12 facilities, and equipment and other aspects of the operation of community  
13 correction programs and facilities necessary for the provision of adequate  
14 and effective supervision and service;

15 (15) Shall establish minimum standards for the employment of  
16 community correction employees;

17 (16) Shall establish programs of research, evaluation,  
18 statistics, audit, and planning, including studies and evaluation of the  
19 performance of various functions and activities of the Department of  
20 Community Correction and studies affecting the treatment of offenders and  
21 information about other programs;

22 (17)(A) Is authorized to receive and disburse moneys ordered to  
23 be paid by offenders pursuant to statutory economic sanctions.

24 (B) The Department of Community Correction is authorized  
25 to receive fees to be levied by the courts or authorized by the Board of  
26 Corrections for participation in specified programs and to be paid by  
27 offenders on community correction.

28 (C) The payment of such sanctions and fees may be a  
29 condition of probation, parole, post prison transfer, or attached to  
30 admission and participation in a community correction program.

31 (D) The moneys collected shall be deposited in an  
32 earmarked account at the state level to be used solely for the continuation  
33 and expansion of community correction in this state.

34 (E) Economic sanction officers are to be authorized by the  
35 Department of Community Correction to perform these duties pursuant to  
36 policies and procedures adopted by the Board of Corrections and in accord

1 with any state statutory accounting requirements;

2 (18) May cooperate and contract with the federal government,  
3 with governmental agencies of Arkansas and other states, with political  
4 subdivisions of Arkansas, and with private contractors to provide and improve  
5 community correction options;

6 (19) May inspect and evaluate any community correction site and  
7 conduct audits of financial and service records at any reasonable time to  
8 determine compliance with the Board of Corrections' rules, regulations, and  
9 standards; ~~and~~

10 (20)(A) Shall maintain a full and complete record of each and  
11 every offender under its supervision.

12 (B)(i) To protect the integrity of those records and to  
13 ensure their proper use, it shall be unlawful to permit inspection of or  
14 disclose information contained in those records or to copy or issue a copy of  
15 all or part of any record except as authorized by administrative regulation  
16 or by order of a court of competent jurisdiction.

17 (ii) The regulations shall provide for adequate  
18 standards of security and confidentiality of those records; and

19 (21) Subject to availability of funds, shall employ officers,  
20 employees, and agents and secure sufficient offices for monitoring all sex  
21 offenders on parole or probation who are required to register under the Sex  
22 Offender Registration Act of 1997, § 12-12-901 et seq., and who have been  
23 assessed as a Level 3 or Level 4 offender.

24  
25 SECTION 9. Arkansas Code Title 17, Chapter 80, Subchapter 1 is amended  
26 to add an additional section to read as follows:

27 17-80-116. Criminal background checks.

28 (a) Any health care professional with prescriptive authority may  
29 request information through the Arkansas Crime Information Center on a person  
30 prior to writing or issuing a prescription to the person for a drug to treat  
31 erectile dysfunction.

32 (b)(1) A health care professional is not liable for negligence for  
33 failing to request information under subsection (a) of this section prior to  
34 writing or issuing a prescription to a person for a drug to treat erectile  
35 dysfunction.

36 (2) Evidence of the failure of a health care professional to

1 request information under subsection (a) of this section is not admissible as  
2 evidence of negligence in any court or administrative proceeding.

3  
4 SECTION 10. Arkansas Code § 20-9-310 is amended to read as follows:

5 20-9-310. No liability for furnishing medical records or accessing  
6 information pursuant to subpoena or other legal obligation or authority.

7 Notwithstanding any other law to the contrary, no person or medical  
8 facility serving as a custodian of health or medical records shall be subject  
9 to any civil or criminal liability for ~~providing:~~

10 (1) Providing access to or producing copies of the records  
11 pursuant to a subpoena issued by any board, agency, commission, prosecuting  
12 attorney, or grand jury;

13 (2) Providing access to or producing a copy of the health or  
14 medical records requested by a clerk of a court, the Department of  
15 Correction, the Department of Community Correction, the Arkansas State  
16 Hospital, the Department of Health and Human Services, or a local law  
17 enforcement agency under the Sex Offender Registration Act of 1997, § 12-12-  
18 901 et seq.; or

19 (3) Requesting or accessing information under § 17-80-116.  
20

21 SECTION 11. EMERGENCY CLAUSE. It is found and determined by the  
22 General Assembly of the State of Arkansas that the need to register sex  
23 offenders and update the registration files of sex offenders is necessary to  
24 ensure the safety of the citizens of the State of Arkansas; that the  
25 provisions of this act will improve the process of registering sex offenders  
26 and updating the registration files of sex offenders; and that this act is  
27 immediately necessary because of the public risk posed by sex offenders.  
28 Therefore, an emergency is declared to exist and this act being immediately  
29 necessary for the preservation of the public peace, health, and safety shall  
30 become effective on:

31 (1) The date of its approval by the Governor;

32 (2) If the bill is neither approved nor vetoed by the Governor,  
33 the expiration of the period of time during which the Governor may veto the  
34 bill; or

35 (3) If the bill is vetoed by the Governor and the veto is  
36 overridden, the date the last house overrides the veto.

1

*/s/ D. Creekmore*

*APPROVED: 04/07/2006*