

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: H3/18/03

A Bill

HOUSE BILL 2296

5 By: Representative Lamoureux
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
10 CODE CONCERNING THE SEX OFFENDER REGISTRATION ACT
11 OF 1997; AND FOR OTHER PURPOSES.
12

Subtitle

13 AN ACT TO AMEND VARIOUS SECTIONS OF THE
14 ARKANSAS CODE CONCERNING THE SEX
15 OFFENDER REGISTRATION ACT OF 1997.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 12-12-903(3), concerning definitions under
22 the Sex Offender Registration Act of 1997, is amended to read as follows:

23 (3) "Aggravated sex offense" means an offense in the Arkansas Code
24 substantially equivalent to "aggravated sexual abuse" as defined in 18 U.S.C.
25 § 2241 as it existed on ~~January 1, 2001~~ March 1, 2003, which principally
26 encompasses:

27 (A) ~~Engaging in sexual acts involving penetration with victims~~
28 ~~of any age through the use of force or the threat of serious violence causing~~
29 another person to engage in a sexual act; or

30 (i) By using force against that other person; or

31 (ii) By threatening or placing, or attempting to threaten
32 or place, that other person in fear that any person will be subjected to
33 death, serious bodily injury, or kidnapping; or

34 (B) ~~Engaging in sexual acts involving the penetration of victims~~
35 ~~below the age of twelve (12) Knowingly:~~

36 (i) Rendering another person unconscious and thereby



1 engages in a sexual act with that other person; or

2 (ii) Administering to another person by force or threat of
3 force, or without the knowledge or permission of that person, a drug,
4 intoxicant, or similar substance and thereby;

5 (a) Substantially impairing the ability of that
6 other person to appraise or control conduct; and

7 (b) Engaging or attempting to engage in a sexual act
8 with that other person;

9 (C) Crossing a state line with intent to:

10 (i) Engage or attempt to engage in a sexual act with a
11 person who has not attained the age of twelve (12) years;

12 (ii) Knowingly engage or attempt to engage in a sexual act
13 with another person who has not attained the age of twelve (12) years; or

14 (iv) Knowingly engage or attempt to engage in a sexual act
15 under the circumstances described in subdivisions (3)(A) and (3)(B) with
16 another person who has attained the age of twelve (12) years but has not
17 attained the age of sixteen (16) years and is at least four (4) years younger
18 than that person.

19
20 SECTION 2. Arkansas Code § 12-12-903(6), concerning definitions under
21 the Sex Offender Registration Act of 1997, is amended to read as follows:

22 (6) "Local law enforcement agency having jurisdiction" means
23 the:

24 (A) Chief law enforcement officer of the municipality in
25 which an offender resides or expects to reside and who is employed or is
26 attending an institution of training or education; or

27 (B) County sheriff, if the municipality does not have a
28 chief law enforcement officer or if an offender resides or expects to reside
29 in an unincorporated area of a county;

30
31 SECTION 3. Arkansas Code § 12-12-903(12) through (17), concerning
32 definitions under the Sex Offender Registration Act of 1997, is amended to
33 read as follows:

34 (12)(A) "Sex offense" for the purposes of this subchapter
35 includes, but is not limited to:

36 ~~(i)(a) Rape, § 5-14-103;~~

1 ~~(b) Carnal abuse in the first degree, § 5-14-~~
2 ~~104 [repealed];~~

3 ~~(c) Carnal abuse in the second degree, § 5-14-~~
4 ~~105 [repealed];~~

5 ~~(d) Carnal abuse in the third degree, § 5-14-~~
6 ~~106 [repealed];~~

7 ~~(e) Sexual misconduct, § 5-14-107;~~
8 ~~(f) Sexual abuse in the first degree, § 5-14-~~
9 ~~108;~~

10 ~~(g) Sexual abuse in the second degree, § 5-14-~~
11 ~~109;~~

12 ~~(h) Sexual solicitation of a child, § 5-14-~~
13 ~~110;~~

14 ~~(i) Violation of a minor in the first degree,~~
15 ~~§ 5-14-120;~~

16 ~~(j) Violation of a minor in the second degree,~~
17 ~~§ 5-14-121;~~

18 ~~(k) Incest, § 5-26-202;~~

19 ~~(l) Engaging children in sexually explicit~~
20 ~~conduct for use in visual or print medium, § 5-27-303;~~

21 ~~(m) Transportation of minors for prohibited~~
22 ~~sexual conduct, § 5-27-305;~~

23 ~~(n) Employing or consenting to use of a child~~
24 ~~in sexual performance, § 5-27-402;~~

25 ~~(o) Pandering or possessing visual or print~~
26 ~~medium depicting sexually explicit conduct involving a child, § 5-27-304;~~

27 ~~(p) Producing, directing, or promoting sexual~~
28 ~~performance, § 5-27-403;~~

29 ~~(q) Promoting prostitution in the first~~
30 ~~degree, § 5-70-104;~~

31 ~~(r) Stalking, when ordered by the sentencing~~
32 ~~court to register as a sex offender, § 5-71-229;~~

33 ~~(s) Indecent exposure to a person under the~~
34 ~~age of twelve (12) years, § 5-14-112(b); or~~

35 ~~(t) Exposing another person to human~~
36 ~~immunodeficiency virus, when ordered by the sentencing court to register as a~~

1 ~~sex offender, § 5-14-123;~~

2 ~~(u) Kidnapping pursuant to § 5-11-102(a) when~~
 3 ~~the victim is a minor and the offender is not the parent of the victim;~~

4 ~~(v) False imprisonment in the first degree and~~
 5 ~~false imprisonment in the second degree, §§ 5-11-103 and 5-11-104, when the~~
 6 ~~victim is a minor and the offender is not the parent of the victim;~~

7 ~~(w) Permitting abuse of a child pursuant to §~~
 8 ~~5-27-221;~~

9 ~~(x) Computer child pornography; § 5-27-603;~~
 10 ~~and~~

11 ~~(y) Computer exploitation of a child in the~~
 12 ~~first degree, § 5-27-605(a).~~

13 (i)(a) Kidnapping a minor when the offender is not
 14 the parent of the victim, § 5-11-102;

15 (b) False imprisonment in the first degree when
 16 the offender is not the parent of the victim, § 5-11-103;

17 (c) False imprisonment in the second degree, §
 18 5-11-104;

19 (d) Permanent detention or restraint when the
 20 offender is not the parent of the victim, § 5-11-106;

21 (e) Rape, § 5-14-103;

22 (f) Sexual indecency with a child, § 5-14-110;

23 (g) Public sexual indecency, § 5-14-111;

24 (h) Indecent exposure, § 5-14-112;

25 (i) Exposing another person to HIV, if ordered
 26 by the court to register, § 5-14-123;

27 (j) Sexual assault in the first degree, § 5-
 28 14-124;

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

31 (l) Sexual assault in the third degree, § 5-
 32 14-126;

33 (m) Sexual assault in the fourth degree, § 5-
 34 14-127;

35 (n) Incest, § 5-26-202;

36 (o) Permitting abuse of a child, § 5-27-221;

1 (p) Engaging children in sexually conduct for
2 use in visual or print medium, § 5-27-303;

3 (q) Pandering or possessing visual or print
4 medium depicting sexually explicit conduct involving a child, §5-27-304;

5 (r) Transportation of minors for prohibited
6 sexual conduct, §5-27-305;

7 (s) Employing or consenting to the use of a
8 child in a sexual performance, §5-27-402;

9 (t) Producing, directing, or promoting a
10 sexual performance, §5-27-403;

11 (u) Distributing, possessing, or viewing
12 matter depicting sexually explicit conduct involving a child, §5-27-602;

13 (v) Computer child pornography, § 5-27-603;

14 (w) Computer exploitation of a child, § 5-27-
15 605;

16 (x) Promoting prostitution in the first
17 degree, § 5-70-104; and

18 (y) Stalking, when ordered by the court to
19 register, §5-71-229.

20 (ii) An attempt, solicitation, or conspiracy to
21 commit any of the offenses enumerated in subdivision (12)(A)(i) of this
22 section;

23 (iii) An adjudication of guilt for an offense of the
24 law of another state, for a federal offense, for a tribal court offense, or
25 for a military offense:

26 (a) Which is similar to any of the offenses
27 enumerated in subdivision (12)(A)(i) of this section; or

28 (b) When that adjudication of guilt requires
29 registration under another state's sex offender registration laws; or

30 (c) A violation of any former law of this
31 state that is substantially equivalent to any of the offenses enumerated in
32 subdivision (12)(A) of this section.

33 (B)(i) The sentencing court has the authority to order the
34 registration of any offender shown in court to have attempted to commit or to
35 have committed a sex offense, even though the offense is not enumerated in
36 subdivision (12)(A)(i) of this section.

1 (ii) This authority is limited to sex offenses
 2 enacted, renamed, or amended at a later date by the General Assembly unless
 3 the General Assembly expresses its intent not to consider the offense to be a
 4 true sex offense for the purposes of this subchapter;

5 (iii) The sentencing court has the authority to
 6 require the registration of any offender for whom a sex offense is pled down
 7 to a non sex offense, provided the requirement to register is part of the
 8 plea agreement.

9 (13)(A) "Sex offender" means a person who is adjudicated guilty
 10 ~~adjudicated delinquent and ordered to register by the juvenile court judge,~~
 11 or acquitted on the grounds of mental disease or defect of a sex offense.

12 (B) Unless otherwise specified, "sex offender" includes
 13 those individuals classified by the court as "sexually violent predators";

14 (14)(A) "Sex Offender Assessment Committee" ~~means a group of~~
 15 ~~citizens appointed by the Governor with a specific composition in conformance~~
 16 ~~with 42 U.S.C. § 14071(a)(2)(A), as it existed on January 1, 2001~~ means the
 17 Sex Offender Assessment Committee created by § 12-12-921.

18 ~~(15) "Sex Offender Screening and Risk Assessment" means the~~
 19 ~~individuals or agencies qualified by the Sex Offenders Assessment Committee~~
 20 ~~to perform assessments of sex offenders;~~

21 (16) "Sexually violent offense" means any state, federal,
 22 tribal, or military offense which includes a sexual act as defined in 18
 23 U.S.C. §§ 2241 and 2242, as they existed on ~~January 1, 2001~~ March 1, 2003,
 24 with another person if the offense is nonconsensual regardless of the age of
 25 the victim; and

26 (17) "Sexually violent predator" means a person who has been
 27 adjudicated guilty, ~~adjudicated delinquent and ordered to register by the~~
 28 ~~juvenile court judge,~~ or acquitted on the grounds of mental disease or defect
 29 of a sexually violent offense and who suffers from a mental abnormality or
 30 personality disorder that makes the person likely to engage in predatory
 31 sexually violent offenses.

32
 33 SECTION 4. Arkansas Code 12-12-905(a), concerning applicability of the
 34 Sex Offender Registration Act of 1997, is amended to read as follows:

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

36 (1) A person who is adjudicated guilty on or after August 1,

1 1997, of a sex offense;

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

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

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

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

14 ~~(6) A juvenile who has been ordered to register by a juvenile~~
15 ~~court judge after an adjudication of delinquency on or after September 1,~~
16 ~~1999, of a sex offense; and~~

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

23

24 SECTION 5. Arkansas Code 12-12-906 is amended to read as follows:

25 12-12-906. Duty to register generally - Review of requirements with
26 offenders.

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

30 (B) The Department of Correction shall ensure that
31 offenders received for incarceration complete the registration form prepared
32 by the Director of the Arkansas Crime Information Center pursuant to § 12-12-
33 908.

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

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

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

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

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

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

23 (C) A sex offender sentenced and required to register
24 outside of Arkansas, ~~whether as an adult or a juvenile~~, must submit to
25 reassessment by Sex Offender Screening and Risk Assessment, provide a
26 deoxyribonucleic acid sample if a sample is not already accessible to the
27 Arkansas State Crime Laboratory, and pay the mandatory fee of two hundred
28 fifty dollars (\$250) to the DNA Detection Fund established under § 12-12-1101
29 et seq.

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

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

36 ~~(ii)(a) Upon the decision by the juvenile judge to~~

1 ~~order registration by the juvenile, the juvenile shall comply with all the~~
2 ~~provisions of this subchapter.~~

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

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

9 (b)(1) The registration file of a sex offender who is confined in ~~an~~
10 ~~adult or juvenile~~ a correctional facility or serving a commitment following
11 acquittal on the grounds of mental disease or defect shall be inactive until
12 the registration file is updated by the ~~Department of Correction or the~~
13 ~~Department of Human Services, whichever is~~ department responsible for
14 supervision.

15 (2) Immediately prior to the release of a sex offender or
16 immediately following a sex offender's escape or his or her absconding
17 supervision, the Department of Correction, the Department of Community
18 Correction, or the Department of Human Services shall update the registration
19 file of the sex offender who is to be released or who has escaped or has
20 absconded supervision.

21 (c)(1)(A) When registering a sex offender as provided in subsection
22 (a) of this section, the Department of Correction, the Department of
23 Community Correction, the Department of Human Services, or the local law
24 enforcement agency having jurisdiction shall:

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

28 (ii) Inform the offender that if the offender
29 changes residency, the offender shall give the new address and place of
30 employment, education, or training to the Arkansas Crime Information Center
31 in writing no later than ten (10) days before the offender establishes
32 residency or is temporarily domiciled at the new address;

33 (iii)(a) Inform the offender that if the offender
34 changes residency to another state or enters another state for fourteen (14)
35 consecutive days or more or for an aggregate of thirty (30) days or more a
36 year, the offender must also register in that state regardless of permanent

1 residency.

2 (b) The offender shall register the new
3 address and place of employment, education, or training with the Arkansas
4 Crime Information Center and with a designated law enforcement agency in the
5 new state not later than ten (10) days before the offender establishes
6 residence or is temporarily domiciled in the new state;

7 (iv)(a) Obtain fingerprints and a photograph of the
8 offender if these have not already been obtained in connection with the
9 offense that triggered registration.

10 (b) Obtain a deoxyribonucleic acid sample if
11 one has not already been provided;

12 (v) Require the offender to complete the entire
13 registration process, including, but not limited to, requiring the offender
14 to read and sign a form stating that the duty of the person to register under
15 this subchapter has been explained;

16 (vi) Inform the offender that if the offender's
17 address changes due to an eviction, natural disaster, or any other unforeseen
18 circumstance, the offender shall give the new address to the Arkansas Crime
19 Information Center in writing no later than five (5) business days after the
20 offender establishes residency; and

21 (vii) Inform an offender who has been granted
22 probation that failure to comply with the provisions of this subchapter shall
23 be grounds for revocation of the offender's probation.

24 (B)(i) Any offender required to register as a sex offender
25 must provide a deoxyribonucleic acid sample, i.e., a blood sample or saliva
26 sample, upon registering if a sample has not already been provided to the
27 Arkansas State Crime Laboratory.

28 (ii) Any offender required to register as a sex
29 offender who is entering the State of Arkansas must provide a
30 deoxyribonucleic acid sample, i.e., a blood sample or saliva sample, upon
31 registration and must pay the mandatory fee of two hundred fifty dollars
32 (\$250) to the DNA Detection Fund established by § 12-12-1119.

33 (2) When updating the registration file of an offender, the
34 Department of Correction or the Department of Human Services shall:

35 (A) Review with the offender the duty to register and
36 obtain current information required for registration as described in § 12-12-

1 908;

2 (B) Review with the offender the requirement that if the
3 offender changes address, the offender shall give the new address to the
4 Arkansas Crime Information Center in writing no later than ten (10) days
5 before the offender establishes residency or is temporarily domiciled at the
6 new address;

7 (C) Review with the offender the requirement that if the
8 offender changes address to another state, the offender shall register the
9 new address with the Arkansas Crime Information Center and with a designated
10 law enforcement agency in the new state not later than ten (10) days before
11 the offender establishes residence or is temporarily domiciled in the new
12 state if the new state has a registration requirement;

13 (D) Require the offender to read and sign a form stating
14 that the duty of the person to register under this subchapter has been
15 reviewed; and

16 (E) Inform the offender that if the offender's address
17 changes due to an eviction, natural disaster, or any other unforeseen
18 circumstance, the offender shall give the new address to the Arkansas Crime
19 Information Center in writing no later than five (5) business days after the
20 offender establishes residency.

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

28 (e) Any offender working, enrolled, or volunteering in a public or
29 private elementary, secondary or post-secondary school or institution of
30 training shall notify the Arkansas Crime Information Center of that status
31 and shall register with the law enforcement agency having jurisdiction over
32 that campus.

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

35 (A) Incident to a change in the marital status of the
36 offender; or

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

3 (2) The change in the offender's name shall be reported to the
4 Director of the Arkansas Crime Information Center within thirty (30) calendar
5 days after the official change in name.

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

8
9 SECTION 6. Arkansas Code § 12-12-911(b), concerning the Sexual and
10 Child Offenders Registration Fund, is amended to read as follows:

11 (b) This fund shall consist of special revenues collected pursuant to
12 § 12-12-910, there to be used equally by the Arkansas Crime Information
13 Center and the Arkansas Department of Correction for the administration of
14 this subchapter.

15
16 SECTION 7. Arkansas Code § 12-12-913(g), concerning disclosure of sex
17 offender information, is amended to read as follows:

18 (g)(1) The State Board of Education shall promulgate guidelines for
19 the disclosure to students and parents of information regarding an offender
20 when such information is released to a local school district or institution
21 of higher education or vocational training by a local law enforcement agency
22 having jurisdiction.

23 (2) The board of directors of a local school district, or
24 institution of higher education or vocational training shall adopt a written
25 policy, in accordance with guidelines promulgated by the state board,
26 regarding the distribution to students and parents of information regarding
27 an offender.

28
29 SECTION 8. Arkansas Code § 12-12-913(h) through (j), concerning
30 disclosure of sex offender information, is amended to read as follows:

31 ~~(h) Nothing in this section shall be construed to prevent law~~
32 ~~enforcement officers from notifying members of the public exposed to danger~~
33 ~~of any persons that pose a danger under circumstances that are not enumerated~~
34 ~~in this subchapter.~~

35 ~~(i) Nothing in this subchapter shall be interpreted to make medical~~
36 ~~records or treatment evaluations of the sex offender or sexually violent~~

1 ~~predator subject to disclosure under the Freedom of Information Act of 1967,~~
 2 ~~§ 25-19-101 et seq.~~

3 (h) Nothing in this section shall prevent law enforcement officers
 4 from notifying members of the public of dangerous persons that are not
 5 enumerated in this subchapter.

6 (i) The medical records or treatment evaluations of a sex offender or
 7 sexually violent predator are not subject to disclosure under the Freedom of
 8 Information Act of 1967, § 25-19-101 et seq.

9 (j) Nothing in this subchapter shall be interpreted to prohibit the
 10 posting of offender fact sheets on the Internet, or by other appropriate
 11 means of those offenders who:

12 (1) Are determined to be a sexually violent predator, Risk Level
 13 4;

14 (2) Are delinquent or otherwise in non compliance with the
 15 requirements of registration; or

16 (3) By action of the Sex Offender Assessment Committee belong to
 17 a classification which pose a danger to the safety of the public.

18
 19 SECTION 9. Arkansas Code § 12-12-915 is amended to read as follows:
 20 12-12-915. Regulations.

21 ~~(a) The Arkansas Crime Information Center shall promulgate regulations~~
 22 ~~necessary to administer this subchapter.~~

23 ~~(b) The Department of Correction, the Department of Community~~
 24 ~~Punishment~~ Correction, the Department of Human Services, ~~and~~ the
 25 Administrative Office of the Courts, and the Arkansas Crime Information
 26 Center shall promulgate regulations to establish procedures for notifying
 27 offenders of the obligation to register pursuant to this subchapter and
 28 procedures for registration of those offenders.

29
 30 SECTION 10. Arkansas Code § 12-12-917 is amended to read as follows:
 31 12-12-917. Evaluation protocol ~~—Sexually violent predators—~~
 32 ~~Juveniles adjudicated delinquent~~ - Examiners.

33 (a)(1) The Sex Offender Assessment Committee shall develop an
 34 evaluation protocol for preparing reports to assist courts in making
 35 determinations whether or not a person adjudicated guilty of a sex offense
 36 should be considered a sexually violent predator for purposes of this

1 subchapter.

2 (2) The committee shall also establish qualifications for and
3 qualify examiners to prepare reports in accordance with the evaluation
4 protocol.

5 ~~(b)(1) The committee shall develop an evaluation protocol for~~
6 ~~preparing reports to assist the juvenile division of circuit court in making~~
7 ~~determinations whether or not a juvenile adjudicated delinquent of a sex~~
8 ~~offense should be registered under the provisions of this subchapter.~~

9 ~~(2) The committee shall also establish qualifications for~~
10 ~~examiners and qualify examiners to prepare reports in accordance with the~~
11 ~~evaluation protocol.~~

12 (b)(1) The Sex Offender Assessment Committee shall cause an assessment
13 to be conducted on a case-by-case basis of the public risk posed by a sex
14 offender or sexually violent predator who is required to register under § 12-
15 12-905:

16 (A) After July 1, 1999; and

17 (B) Who have not been assessed prior to July 1, 1999.

18 (2)(A) Adult offenders sentenced to the Department of Correction
19 shall be assessed as the necessary information becomes available after
20 reception into the Department of Correction, with that assessment being
21 reviewed and updated periodically during the course of incarceration.

22 (B) Sex offenders sentenced to life, life without parole,
23 or death shall be assessed only if being considered for release through
24 clemency.

25 (3) Adult offenders adjudicated guilty but given suspended or
26 probated sentences shall be required by the sentencing court to contact Sex
27 Offender Screening and Risk Assessment at the Arkansas Department of
28 Correction in Pine Bluff within ten (10) days of adjudication to schedule an
29 assessment to be conducted at a location determined by the Department of
30 Correction in consultation with the sentencing court.

31 (4)(A) Sex offenders currently in the community who have not
32 been assessed and classified shall be identified by the Arkansas Crime
33 Information Center.

34 (B)(i) The Department of Community Correction shall notify
35 offenders in a particular area to present themselves at a designated location
36 for assessment.

1 (ii) Failure to appear or failure to cooperate fully
2 with assessment personnel shall result in a default classification of the
3 highest risk category and in notification of the parole or probation officer,
4 if applicable, and may be considered a violation of the statute requiring
5 registration.

6 (d)(1) The Sex Offender Assessment Committee shall have access to all
7 relevant records and information in the possession of public agencies or any
8 private entity contracting with a public agency relating to the sex offender
9 or sexually violent predator under review.

10 (2) The records and information include, but are not limited to:

11 (A) Police reports;

12 (B) Statements of probable cause;

13 (C) Presentence investigations and reports;

14 (D) Complete judgments and sentences;

15 (E) Current classification referrals;

16 (F) Criminal history summaries;

17 (G) Violation and disciplinary reports;

18 (H) All psychological evaluations and psychiatric hospital
19 reports;

20 (I) Sex offender or sexually violent predator treatment
21 program reports;

22 (J) Juvenile records;

23 (K) Victim impact statements;

24 (L) Investigation reports to the child abuse hotline, the
25 Division of Children and Family Services, and any entity contracting with the
26 Department of Human Services for investigation or treatment of sexual or
27 physical abuse or domestic violence; and

28 (M) Statement of medical providers treating victims of sex
29 offenses indicating the extent of injury to the victim.

30 (e)(1)(A) Records and information obtained under this section shall not
31 be subject to the Freedom of Information Act of 1967, § 25-19-101, et seq.,
32 unless otherwise authorized by law.

33 (B)(i) Records and information obtained under this section
34 shall not be available to the sex offender except through the agency or
35 individual having primary custody of the offender, unless otherwise ordered
36 by a court of competent jurisdiction.

1 (ii) The offender may be given a list of the records
2 or information obtained.

3 (2) The sex offender or sexually violent predator shall have
4 access to records and information generated and maintained by the Sex
5 Offender Assessment Committee unless the record or information generated
6 contains the addresses of victims or persons who have made statement adverse
7 to the sex offender or sexually violent predator.

8 (f) In classifying the offender into a risk level for the purposes of
9 public notification under § 12-12-913, the Sex Offender Assessment Committee
10 shall review each sex offender or sexually violent predator under its
11 authority:

12 (1) Prior to the offender's release for confinement in a
13 correctional facility;

14 (2) Prior to the release of a person who has been committed
15 following an acquittal on the grounds of mental disease or defect;

16 (3) At the start of an offender's suspended sentence; or

17 (4) At the start of an offender's probation period.

18 (g)(1) The Sex Offender Assessment Committee shall issue to the local
19 law enforcement agency having jurisdiction, for its use in making public
20 notifications under § 12-12-913, the offender fact sheet required by the
21 regulations promulgated by the Sex Offender Assessment Committee regarding
22 the sex offender or sexually violent predator.

23 (2) The Post Prison Transfer Board shall receive copies of the
24 offender fact sheet on inmates of the Department of Correction.

25 (3) The Department of Community Correction shall receive copies
26 of the offender fact sheet on any individual under its supervision.

27 (4)(A)(i) The offender fact sheet shall be reported on standard
28 forms for ease of transmission and communication.

29 (ii) The offender fact sheet shall also be on an
30 internet based application accessible to law enforcement and state boards and
31 licensing agencies.

32 (iii) The offender fact sheet of sexually violent
33 predators and those offenders found by the Arkansas Crime Information Center
34 to be in violation of registration requirement may be accessible by the
35 general public unless to do so places innocent individuals at risk.

36 (B) The standard forms shall include, but not be limited

1 to:

2 (i) Registration information as required in § 12-12-
3 908;

4 (ii) Risk level;

5 (iii) Date of deoxyribonucleic acid (DNA) sample;

6 (iv) Psychological factors likely to affect sexual
7 control;

8 (v) Victim age and gender preference;

9 (vi) Treatment history and recommendations; and

10 (viii) Other relevant information deemed necessary

11 by the Sex Offender Assessment Committee or by professional staff performing
12 sex offender assessments.

13 (5)(A) The Sex Offender Assessment Committee shall ensure that
14 the notice is complete in its entirety.

15 (B) Law enforcement officers shall notify the Arkansas
16 Crime Information Center if an offender has moved or is otherwise in
17 violation of registration requirements.

18 (6)(A) All material used in the assessment will be kept on file
19 in its original form for one (1) year.

20 (B) After one (1) year, the file may be stored
21 electronically.

22 (h)(1) The Department of Correction, in cooperation with the Sex
23 Offender Assessment Committee, shall promulgate rules and regulations to
24 establish the review process for assessment determinations.

25 (2) The sex offender or sexually violent predator may request a
26 review upon presentation of documentation that the law or guidelines were not
27 properly followed or upon the presentation of information that was not
28 available at the time of the assessment determination.

29 (g)(1)(A) A sex offender or sexually violent predator may request the
30 Sex Offender Assessment Committee to reassess the offender's assigned risk
31 level after five (5) years have elapsed since initial risk assessment by the
32 Sex Offender Assessment Committee, and may renew that request once every five
33 (5) years.

34 (B) In the request for reassessment, the offender shall
35 list the facts and circumstances that demonstrate that the offender no longer
36 poses the same degree of risk to the community.

1 (2) The Sex Offender Assessment Committee shall also take into
2 consideration any subsequent criminal acts by the sex offender or sexually
3 violent predator who has requested reassessment.
4

5 SECTION 11. Arkansas Code § 12-12-918 is amended to read as follows:

6 12-12-918. Classification as sexually violent predator – Requirements
7 and Appeal.

8 (a)(1) In order to classify a person as a sexually violent predator, a
9 prosecutor ~~shall~~ may allege on the face of an information that the prosecutor
10 is seeking a determination that the defendant is a sexually violent predator.

11 (2)(A) If the defendant is adjudicated guilty, the court shall
12 enter an order directing an examiner qualified by the Sex Offender Assessment
13 Committee to issue a report to the sentencing court that recommends whether
14 or not the defendant should be classified as a sexually violent predator.

15 (B) Copies of the report shall be forwarded immediately to
16 the prosecutor and to the defense attorney.

17 (C) The report shall not be admissible for purposes of
18 sentencing.

19 (3) After sentencing, the court shall make a determination
20 regarding the defendant's status as a sexually violent predator.

21 (b)(1) In order for the examiner qualified by the committee to prepare
22 the report:

23 (A) The defendant ~~shall~~ may be sent for evaluation to a
24 facility designated by the Department of Correction; or

25 (B) The Sex Offender ~~Screening and Risk Assessment~~
26 Committee may elect to send an examiner to the local or regional detention
27 facility.

28 (2) The cost of the evaluation shall be paid by the ~~department~~
29 Department of Correction.

30 (c)(1) Should evidence be found in the course of any assessment
31 conducted by Sex Offender ~~Screening and Risk Assessment~~ Committee that a sex
32 offender appears to meet the criteria for being classified as a sexually
33 violent predator, the committee shall bring this information to the attention
34 of the prosecutor, who will determine whether a hearing on the matter is
35 warranted.

36 (2) The sentencing court shall retain jurisdiction to determine

1 whether an offender is a sexually violent predator for one (1) year after
2 sentencing or for so long as the offender remains incarcerated for the sex
3 offense.

4 (d)(1) The prosecutor's affidavit should state whether or not the
5 offense qualifies as an aggravated sex offense.

6 (2) Should this statement be omitted, the prosecutor will be
7 contacted by Sex Offender ~~Screening and Risk Assessment~~ Committee and asked
8 to furnish a written determination as to whether or not the offense qualifies
9 as an aggravated sex offense.

10 (e) Because information often emerges in the course of a sex offender
11 evaluation that is not available to the court or is not admissible under the
12 rules of evidence, the following alternative procedure is established:

13 (1) Examiners qualified by the Sex Offender Assessment Committee
14 shall, after the effective date of this subsection, include in the assessment
15 of any sex offender convicted of a sex offense, as defined in § 12-12-903, a
16 review as to whether the frequency, repetition over time, severity of trauma
17 to the victim, or established pattern of predatory behaviors suggests that
18 the individual suffers from a mental abnormality or personality disorder that
19 makes the person likely to engage in future predatory sexual offenses;

20 (2) If a mental abnormality or personality disorder is
21 suggested, a licensed psychologist or psychiatrist qualified by the Sex
22 Offender Assessment Committee shall conduct further assessment to determine
23 the presence or absence of a mental abnormality or personality disorder;

24 (4) The report of the assessment shall be presented to the Sex
25 Offender Assessment Committee, which shall make that determination according
26 to protocols established by that committee and published in the guidelines.

27 (f) Challenges of any assigned risk level shall proceed as follows:

28 (1) Any individual may request, pro se, or through counsel, an
29 administrative review of any risk level assigned;

30 (2) The request for an administrative review shall be made in
31 accordance with instructions provided on the risk level notification within
32 thirty (30) days of sending the advisement by certified mail;

33 (3) The basis of the request for administrative review shall be
34 clearly stated and any documentary evidence attached. The evidence
35 considered shall be:

36 (A) A statement that the rules and procedures were not

1 properly followed in reaching a decision on the risk level of the individual;
2 and

3 (B) Documents not available at the time of assessment that
4 have a bearing on the risk that the individual poses to the community;

5 (4) Unless a request for an administrative review is received
6 within thirty (30) days, an offender fact sheet shall be made available to
7 law enforcement so that community notification may commence;

8 (5) If a request for an administrative review is received, law
9 enforcement may make community notification only at the level immediately
10 below the level upon which review has been requested;

11 (6)(A) A member of the Sex Offender Assessment Committee shall
12 conduct the review and respond within thirty (30) days.

13 (B) If additional time is needed to obtain facts, the
14 individual requesting the review shall be so notified.

15 (7)(A) Upon receipt of the findings of the reviewer by certified
16 mail, the recipient has thirty (30) days to file a petition for judicial
17 review in the Circuit Court of Pulaski County or in the county in which the
18 offender resides or does business under the Administrative Procedures Act, §
19 25-15-201 et seq.

20 (B) The court shall refuse to accept any appeal of a risk
21 level that has not undergone administrative review;

22 (8)(A) When the petition for judicial review has been served on
23 the executive secretary of the Sex Offender Assessment Committee, a record of
24 the committee's findings, and copies of all records in its possession shall
25 be furnished to the court within thirty (30) days.

26 (B) The committee may ask the court to seal statements of
27 victims, medical records, and other items that could place third parties at
28 risk of harm; and

29 (9) Upon ruling by the court, community notification at
30 the level approved in the ruling shall commence.

31
32 SECTION 12. Arkansas Code § 12-12-919(a), concerning termination of
33 the obligation to register as a sex offender, is amended to read as follows:

34 (a) Lifetime registration is required for a sex offender found to have
35 committed an aggravated sex offense, determined by the court to be a sexually
36 violent predator, or ~~found to have been~~ adjudicated guilty of a second or

1 subsequent sex offense under a separate case number, not multiple counts on
2 the same charge.

3
4 SECTION 13. Arkansas Code Title 12, Chapter 12, Subchapter 9 is
5 amended to add an additional section to read as follows:

6 12-12-921. Sex Offender Assessment Committee.

7 (a) The Sex Offender Assessment Committee shall consist of nine (9)
8 members as follows:

9 (1) The Governor shall appoint, subject to confirmation by the
10 Senate:

11 (A) One (1) member who is a defense attorney;

12 (B) One (1) member who is a prosecuting attorney;

13 (C) One (1) member who is a licensed mental health
14 professional and has demonstrated expertise in treatment of sex offenders;

15 (D) One (1) member who is a victims' rights advocate;

16 (E) One (1) member who is a law enforcement officer; and

17 (F) One (1) member with expertise in juvenile justice or
18 treatment.

19 (2) The Director of the Department of Correction or the
20 director's designee;

21 (3) The Director of the Department of Community Correction or
22 the director's designee; and

23 (4) The Director of the Arkansas Crime Information Center or the
24 director's designee.

25 (b)(1) Members appointed by the Governor shall be for four-year
26 staggered terms.

27 (2) If a vacancy of one (1) of the members appointed by the
28 Governor occurs for any reason other than expiration of a regular term, the
29 vacancy shall be filled for the unexpired portion of the term by appointment
30 of the Governor.

31 (3) A member of the committee appointed by the Governor may be
32 removed by the Governor for neglect of duty or malfeasance in office.

33 (4) A member shall be considered active unless his or her
34 resignation has been submitted or requested by the Governor, or he or she has
35 more than two (2) unexcused absences from meetings in a twelve-month period
36 and this fact has been reported to the Governor's office.

1 (c) The members of the Sex Offender Assessment Committee shall elect
2 from their membership, a chair and a vice chair, annually.

3 (d) The Director of the Department of Correction or the director's
4 designee shall serve as the executive secretary.

5 (e)(1) A majority of the members of the committee shall constitute a
6 quorum for the transaction of business

7 (2) The committee shall meet at least quarterly.

8 (3) Special meetings may be called by the chair or as provided
9 by the rules adopted by the committee.

10 (f) The executive secretary of the committee shall keep full and true
11 records of all committee proceedings and preserve all books, documents, and
12 papers relating to the business of the committee.

13 (g) The meetings shall not be open to the public under the Freedom of
14 Information Act of 1967, § 25-19-101, et seq.

15 (h) The committee shall assist the Department of Correction in
16 promulgating rules and regulations to ensure the proper implementation of
17 Acts 1999, No. 1353.

18 (i)(1) The committee shall report in writing to the Governor and to
19 the Legislative Council by July 31 of each year.

20 (2) The report shall contain:

21 (A) A summary of the proceedings of the committee during
22 the preceding fiscal year;

23 (B) A detailed and itemized statement of all revenue and
24 of all expenditures made by or on behalf of the committee;

25 (C) Other information deemed necessary or useful; and

26 (D) Any additional information that may be requested by
27 the Governor and the Legislative Council.

28
29 /s/ Lamoureux
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