

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 H3/28/03 S4/16/03

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, if a felony
 25 level offense;

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

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

30 (k) Sexual assault in the second degree, § 5-
 31 14-125;

32 (l) Sexual assault in the third degree, § 5-
 33 14-126;

34 (m) Sexual assault in the fourth degree, § 5-
 35 14-127;

36 (n) Incest, § 5-26-202;

1 (o) Permitting abuse of a child, § 5-27-221;
2 (p) Engaging children in sexually conduct for
3 use in visual or print medium, § 5-27-303;
4 (q) Pandering or possessing visual or print
5 medium depicting sexually explicit conduct involving a child, §5-27-304;
6 (r) Transportation of minors for prohibited
7 sexual conduct, §5-27-305;
8 (s) Employing or consenting to the use of a
9 child in a sexual performance, §5-27-402;
10 (t) Producing, directing, or promoting a
11 sexual performance, §5-27-403;
12 (u) Distributing, possessing, or viewing
13 matter depicting sexually explicit conduct involving a child, §5-27-602;
14 (v) Computer child pornography, § 5-27-603;
15 (w) Computer exploitation of a child, § 5-27-
16 605;
17 (x) Promoting prostitution in the first
18 degree, § 5-70-104; and
19 (y) Stalking, when ordered by the court to
20 register, §5-71-229.

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

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

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

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

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

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

1 subdivision (12)(A)(i) of this section.

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

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

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

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

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

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

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

29

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

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

33 (1) A person who is adjudicated guilty on or after August 1,
34 1997, of a sex offense;

35 (2) A person who is serving a sentence of incarceration,
36 probation, parole, or other form of community supervision as a result of an

1 adjudication of guilt on August 1, 1997, for a sex offense;

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

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

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

11 ~~(6) A juvenile who has been ordered to register by a juvenile~~
12 ~~court judge after an adjudication of delinquency on or after September 1,~~
13 ~~1999, of a sex offense; and~~

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

20
21 SECTION 5. Arkansas Code 12-12-906 is amended to read as follows:

22 12-12-906. Duty to register generally - Review of requirements with
23 offenders.

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

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

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

34 (D) The Arkansas State Hospital shall ensure that the
35 registration form is completed for any offender found not guilty by reason of
36 insanity and shall arrange an evaluation by Sex Offender Screening and Risk

1 Assessment.

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

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

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

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

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

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

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

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

36 ~~(b) The juvenile court judge may order~~

1 ~~reassessment by Sex Offender Screening and Risk Assessment at any time during~~
2 ~~the juvenile judge's jurisdiction over the juvenile.~~

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

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

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

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

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

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

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

35 (b) The offender shall register the new
36 address and place of employment, education, or training with the Arkansas

1 Crime Information Center and with a designated law enforcement agency in the
2 new state not later than ten (10) days before the offender establishes
3 residence or is temporarily domiciled in the new state;

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

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

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

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

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

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

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

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

32 (A) Review with the offender the duty to register and
33 obtain current information required for registration as described in § 12-12-
34 908;

35 (B) Review with the offender the requirement that if the
36 offender changes address, the offender shall give the new address to the

1 Arkansas Crime Information Center in writing no later than ten (10) days
2 before the offender establishes residency or is temporarily domiciled at the
3 new address;

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

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

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

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

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

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

32 (A) Incident to a change in the marital status of the
33 offender; or

34 (B) Necessary to effect the exercise of religion of the
35 offender.

36 (2) The change in the offender's name shall be reported to the

1 Director of the Arkansas Crime Information Center within thirty (30) calendar
2 days after the official change in name.

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

5
6 SECTION 6. Arkansas Code § 12-12-911(b), concerning the Sexual and
7 Child Offenders Registration Fund, is amended to read as follows:

8 (b) This fund shall consist of special revenues collected pursuant to
9 § 12-12-910, there to be used equally by the Arkansas Crime Information
10 Center and the Arkansas Department of Correction for the administration of
11 this subchapter.

12

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

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

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

25

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

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

32 ~~(i) Nothing in this subchapter shall be interpreted to make medical~~
33 ~~records or treatment evaluations of the sex offender or sexually violent~~
34 ~~predator subject to disclosure under the Freedom of Information Act of 1967,~~
35 ~~§ 25-19-101 et seq.~~

36 (h) Nothing in this section shall prevent law enforcement officers

1 from notifying members of the public of dangerous persons that are not
2 enumerated in this subchapter.

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

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

9 (1) Are determined to be a sexually violent predator, Risk Level
10 4;

11 (2) Are determined to be delinquent or otherwise in
12 noncompliance with the requirements of registration under rules and
13 regulations promulgated by the Sex Offender Assessment Committee; or

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

16
17 SECTION 9. Arkansas Code § 12-12-915 is amended to read as follows:
18 12-12-915. Regulations.

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

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

27
28 SECTION 10. Arkansas Code § 12-12-917 is amended to read as follows:
29 12-12-917. Evaluation protocol ~~—Sexually violent predators—~~
30 ~~Juveniles adjudicated delinquent~~ - Examiners.

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

36 (2) The committee shall also establish qualifications for and

1 qualify examiners to prepare reports in accordance with the evaluation
2 protocol.

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

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

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

14 (A) After July 1, 1999; and

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

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

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

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

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

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

35 (ii)(a) Failure to appear or failure to cooperate
36 fully with assessment personnel shall result in a default classification of

1 the highest risk category and in notification of the parole or probation
2 officer, if applicable, and may be considered a violation of the statute
3 requiring registration.

4 (b) Neither the exercise of the right to
5 appeal a conviction nor the refusal to admit an offense of which the offender
6 was convicted after a trial shall be considered as a failure to cooperate
7 fully.

8 (iii)(a) No statement made to the assessment
9 personnel in the course of the assessment, nor any information derived from
10 the statement made to the assessment personnel, shall be admissible in any
11 criminal prosecution.

12 (b) This does not exempt staff from reporting
13 ongoing abuse to the Central Registry as required under § 5-28-201, et seq.

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

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

19 (A) Police reports;

20 (B) Statements of probable cause;

21 (C) Presentence investigations and reports;

22 (D) Complete judgments and sentences;

23 (E) Current classification referrals;

24 (F) Criminal history summaries;

25 (G) Violation and disciplinary reports;

26 (H) All psychological evaluations and psychiatric hospital
27 reports;

28 (I) Sex offender or sexually violent predator treatment
29 program reports;

30 (J) Juvenile records;

31 (K) Victim impact statements;

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

36 (M) Statement of medical providers treating victims of sex

1 offenses indicating the extent of injury to the victim.

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

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

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

11 (2)(A) The sex offender or sexually violent predator shall have
12 access to records and information generated and maintained by the Sex
13 Offender Assessment Committee unless the record or information generated
14 contains the addresses of victims or persons who have made statement adverse
15 to the sex offender or sexually violent predator.

16 (B) In that event, the addresses shall be redacted, and
17 the sex offender or sexually violent predator shall have access to records
18 and information other than the addresses.

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

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

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

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

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

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

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

36 (3) The Department of Community Correction shall receive copies

1 of the offender fact sheet on any individual under its supervision.

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

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

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

11 (B) The standard forms shall include, but not be limited
12 to:

13 (i) Registration information as required in § 12-12-
14 908;

15 (ii) Risk level;

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

17 (iv) Psychological factors likely to affect sexual
18 control;

19 (v) Victim age and gender preference;

20 (vi) Treatment history and recommendations; and

21 (viii) Other relevant information deemed necessary
22 by the Sex Offender Assessment Committee or by professional staff performing
23 sex offender assessments.

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

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

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

31 (B) After one (1) year, the file may be stored
32 electronically.

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

36 (2) The sex offender or sexually violent predator may request a

1 review upon presentation of documentation that the law or guidelines were not
2 properly followed or upon the presentation of information that was not
3 available at the time of the assessment determination.

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

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

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

15
16 SECTION 11. Arkansas Code § 12-12-918 is amended to read as follows:

17 12-12-918. Classification as sexually violent predator – Requirements
18 and Appeal.

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

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

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

28 (C) The report shall not be admissible for purposes of
29 sentencing.

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

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

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

36 (B) The Sex Offender ~~Screening and Risk~~ Assessment

1 Committee may elect to send an examiner to the local or regional detention
2 facility.

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

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

11 (2) The sentencing court shall retain jurisdiction to determine
12 whether an offender is a sexually violent predator for one (1) year after
13 sentencing or for so long as the offender remains incarcerated for the sex
14 offense.

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

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

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

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

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

35 (4) The report of the assessment shall be presented to the Sex
36 Offender Assessment Committee, which shall make that determination according

1 to protocols established by that committee and published in the guidelines,
2 provided that the protocols establish that the designation as a sexually
3 violent predator be by clear and convincing evidence.

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

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

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

10 (3) The basis of the request for administrative review shall be
11 clearly stated and any documentary evidence attached. The evidence
12 considered shall be:

13 (A) A statement that the rules and procedures were not
14 properly followed in reaching a decision on the risk level of the individual;

15 (B) Documents or information not available at the time of
16 assessment that have a bearing on the risk that the individual poses to the
17 community; or

18 (C) The assessment is not supported by clear and convincing
19 evidence.

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

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

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

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

30 (7)(A) Upon receipt of the findings of the reviewer by certified
31 mail, the recipient has thirty (30) days to file a petition for judicial
32 review in the Circuit Court of Pulaski County or in the county in which the
33 offender resides or does business under the Administrative Procedures Act, §
34 25-15-201 et seq.

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

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

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

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

10
11 SECTION 12. Arkansas Code § 12-12-919 is amended to read as follows:

12 (a) Lifetime registration is required for a sex offender found to have
13 committed an aggravated sex offense, determined by the court to be a sexually
14 violent predator, or ~~found to have been~~ adjudicated guilty of a second or
15 subsequent sex offense under a separate case number, not multiple counts on
16 the same charge.

17 (b)(1)(A)(i) Any other sex offender required to register under this
18 subchapter may make application for an order terminating the obligation to
19 register to the sentencing court after fifteen (15) years.

20 (ii) A sex offender sentenced in another state but
21 permanently residing in Arkansas may make an application for an order
22 terminating the obligation to register to the court of the county in which
23 the offender resides.

24 (B)(i) The court shall hold a hearing on the application
25 at which the applicant and any interested persons may present witnesses and
26 other evidence.

27 (ii) No fewer than twenty (20) days prior to the
28 date of the hearing on the application, a copy of the application for
29 termination of the obligation to register shall be served on the prosecutor
30 of the county in which the adjudication of guilt triggering registration was
31 obtained.

32 (2) The court shall grant an order terminating the obligation to
33 register upon proof by a preponderance of the evidence that:

34 (A) The applicant, ~~within~~ for a period of fifteen (15)
35 years after the person was released from prison or other institution, placed
36 on parole, supervised release, or probation has not been adjudicated guilty

1 of a sex offense; and

2 (B) The applicant is not likely to pose a threat to the
3 safety of others.

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

7 12-12-921. Sex Offender Assessment Committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 and this fact has been reported to the Governor's office.

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

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

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

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

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

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

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

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

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

21 (2) The report shall contain:

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

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

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

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

29
30 */s/ Lamoureux*