

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 85th General Assembly
3 First Extraordinary Session, 2006
4

As Engrossed: S4/5/06
A Bill

Call Item 22

HOUSE BILL 1005

5 By: Representatives D. Creekmore, S. Prater, McDaniel, Abernathy, Adcock, Anderson, Berry, Bolin,
6 Borhauer, Boyd, Bradford, Bright, Burris, Childers, Clemons, Cook, Cooper, Cowling, Davenport,
7 Dickinson, Dunn, Edwards, L. Evans, D. Evans, Everett, Fite, George, Glidewell, R. Green, Hardwick,
8 Harris, J. Hutchinson, T. Hutchinson, J. Johnson, Kenney, Key, Kidd, Lamoureux, W. Lewellen, Mack,
9 Mahony, Maloch, M. Martin, J. Martin, Matayo, Mathis, Medley, Nichols, Norton, Ormond, Overbey,
10 Pace, Petrus, Pritchard, Pyle, Ragland, Rankin, Reep, Roebuck, Rogers, Rosenbaum, Sample, Saunders,
11 Schulte, Scroggin, Sullivan, Walters, Wells, Willis, Wood, Wyatt
12 By: Senators Salmon, Laverty, Broadway, Altes, Baker, Capps, Faris, Glover, Higginbothom, Holt,
13 Horn, J. Jeffress, G. Jeffress, Madison, Miller, T. Smith, J. Taylor, Trusty, Whitaker, Womack,
14 Wooldridge, *Wilkinson*
15
16

17 **For An Act To Be Entitled**

18 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
19 CODE CONCERNING THE SEX OFFENDER REGISTRATION ACT
20 OF 1997; TO PROVIDE FOR ELECTRONIC MONITORING OF
21 SEXUALLY VIOLENT PREDATORS; TO EXPAND THE POWERS
22 AND DUTIES OF THE DEPARTMENT OF COMMUNITY
23 CORRECTION TO MONITOR CERTAIN SEX OFFENDERS; TO
24 AUTHORIZE PERSONS WITH PRESCRIPTIVE AUTHORITY TO
25 REQUEST CRIMINAL BACKGROUND CHECKS IN CERTAIN
26 CASES; TO PROVIDE IMMUNITY FOR PROVIDING,
27 REQUESTING, OR ACCESSING CERTAIN INFORMATION; AND
28 FOR OTHER PURPOSES.
29

30 **Subtitle**

31 THE CHILD PROTECTION ACT.
32
33

34 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
35

36 SECTION 1. Arkansas Code § 12-12-904 is amended to read as follows:



1 12-12-904. Failure to register or reregister - Failure to comply with
2 reporting requirements.

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

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

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

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

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

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

22 (a) An eviction;

23 (b) A natural disaster; or

24 (c) Any other unforeseen circumstance; and

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

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

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

33
34 SECTION 2. Arkansas Code § 12-12-905 is amended to read as follows:
35 12-12-905. Applicability.

36 (a) The registration or reregistration requirements of this subchapter

1 apply to:

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

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

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

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

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

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

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

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

30

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

32 12-12-906. Duty to register or reregister generally - Review of
33 requirements with offenders.

34 (a)(1)(A)(i) At the time of adjudication of guilt, the sentencing
35 court shall enter on the judgment and commitment or judgment and disposition
36 form ~~whether or not~~ that the offender is required to register as a sex

1 offender and shall indicate whether the:

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

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

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

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

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

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

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

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

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

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

1 completed for the sex offender upon intake, release, or discharge.

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

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

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

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

18 (i) ~~submit~~ Submit to ~~reassessment~~ assessment by Sex
19 Offender Screening and Risk Assessment;⁷

20 (ii) ~~provide~~ Provide a deoxyribonucleic acid (DNA)
21 sample if a sample is not already accessible to the State Crime Laboratory;⁷
22 and

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

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

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

1 absconded supervision.

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

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

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

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

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

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

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

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

36 (vii) Inform the sex offender that if the sex

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

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

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

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

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

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

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

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

33 (C) Review with the sex offender the requirement that if
34 the sex offender changes address to another state, the sex offender shall
35 register the new address with the center and with a designated law
36 enforcement agency in the new state not later than ten (10) days before the

1 sex offender establishes residence or is temporarily domiciled in the new
2 state if the new state has a registration requirement;

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

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

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

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

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

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

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

33 (f)(1) An offender required to register pursuant to the provisions of
34 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 sex
36 offender; or

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

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

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

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

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

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

19 (A) Name;

20 (B) Social security number;

21 (C) Age;

22 (D) Race;

23 (E) Gender;

24 (F) Date of birth;

25 (G) Height;

26 (H) Weight;

27 (I) Hair and eye color;

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

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

33 (K) Date and place of any employment;

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

35 (M) Fingerprints; and

36 (N) Photograph.

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

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

10 (A) Vehicle identification number;

11 (B) License tag number;

12 (C) Registration number; and

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

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

18 (A) Hull identification number;

19 (B) Manufacturer's serial number;

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

21 (D) Registration number; and

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

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

29
30 SECTION 4. Arkansas Code § 12-12-915 is amended to read as follows:
31 12-12-915. Authority – Regulations.

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

35 (b) The Department of Correction, the Department of Community
36 Correction, the Department of Health and Human Services, the Administrative

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

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

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

13
14 SECTION 5. Arkansas Code § 12-12-917(b), pertaining to procedures for
15 assessments of sex offenders or sexually violent predators, is amended to
16 read as follows:

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

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

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

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

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

36 (b)(1) The prosecuting attorney shall make a

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

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

6 (A) Arrest reports;

7 (B) Incident reports;

8 (C) Offender statements;

9 (D) Judgment and disposition

10 forms;

11 (E) Medical records;

12 (F) Witness statements; and

13 (G) Any record considered relevant

14 by the prosecuting attorney.

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

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

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

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

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

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

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

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

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

11
12 SECTION 6. Arkansas Code § 12-12-922(b), pertaining to the procedure
13 for challenging an assigned sex offender risk level, is amended to read as
14 follows:

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

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

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

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

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

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

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

35 (iii) The assessment is not supported by substantial
36 evidence.

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

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

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

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

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

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

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

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

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

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

35 (ii) When the petition for judicial review has been
36 served on the executive secretary of the committee, a record of the

1 committee's findings and copies of all records in its possession shall be
2 furnished by the committee to the court within thirty (30) days of service.

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

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

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

11
12 SECTION 7. Arkansas Code Title 12, Chapter 12, Subchapter 9 is amended
13 to add an additional section to read as follows:

14 12-12-923. Electronic monitoring of sex offenders.

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

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

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

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

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

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

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

35 (c)(1)(A) Unless a sex offender subject to electronic monitoring is
36 indigent, he or she is required to reimburse the supervising agency a

1 reasonable fee to defray the supervision costs.

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

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

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

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

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

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

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

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

25
26 SECTION 8. Arkansas Code § 12-27-125(b), pertaining to the powers and
27 duties of the Department of Community Correction, is amended to add an
28 additional subdivision to read as follows:

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

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

1 Correction by the Board of Corrections;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (E) Economic sanction officers are to be authorized by the
34 Department of Community Correction to perform these duties pursuant to
35 policies and procedures adopted by the Board of Corrections and in accord
36 with any state statutory accounting requirements;

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

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

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

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

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

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

23
24 SECTION 9. Arkansas Code Title 17, Chapter 80, Subchapter 1 is amended
25 to add an additional section to read as follows:

26 17-80-116. Criminal background checks.

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

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

35 (2) Evidence of the failure of a health care professional to
36 request information under subsection (a) of this section is not admissible as

1 evidence of negligence in any court or administrative proceeding.

2
3 SECTION 10. Arkansas Code § 20-9-310 is amended to read as follows:

4 20-9-310. No liability for furnishing medical records or accessing
5 information pursuant to subpoena or other legal obligation or authority.

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

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

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

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

19
20 SECTION 11. EMERGENCY CLAUSE. It is found and determined by the
21 General Assembly of the State of Arkansas that the need to register sex
22 offenders and update the registration files of sex offenders is necessary to
23 ensure the safety of the citizens of the State of Arkansas; that the
24 provisions of this act will improve the process of registering sex offenders
25 and updating the registration files of sex offenders; and that this act is
26 immediately necessary because of the public risk posed by sex offenders.
27 Therefore, an emergency is declared to exist and this act being immediately
28 necessary for the preservation of the public peace, health, and safety shall
29 become effective on:

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

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

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

36 */s/ D. Creekmore*