

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: H3/10/99 S4/5/99

A Bill

Act 1353 of 1999
HOUSE BILL 1963

5 By: Representative Ferrell
6
7

For An Act To Be Entitled

9 "AN ACT TO AMEND THE SEX AND CHILD OFFENDER
10 REGISTRATION ACT OF 1997; TO DECLARE AN EMERGENCY; AND
11 FOR OTHER PURPOSES."

Subtitle

12
13
14 "TO AMEND THE SEX AND CHILD OFFENDER
15 REGISTRATION ACT OF 1997."

16
17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code Annotated § 12-12-903 is amended to read as
20 follows:

21 "12-12-903. Definitions.

22 For the purposes of this subchapter:

23 (1) 'Adjudication of guilt' or other words of similar import means a
24 plea of guilty, a plea of nolo contendere, a negotiated plea, a finding of
25 guilt by a judge, or a finding of guilt by a jury;

26 (2) 'Administration of criminal justice' means performing functions of
27 investigation, apprehension, detention, prosecution, adjudication,
28 correctional supervision, or rehabilitation of accused persons or criminal
29 offenders. The administration of criminal justice also includes criminal
30 identification activities and the collection, maintenance, and dissemination
31 of criminal justice information;

32 (3) 'Change of address' or other words of similar import means a change
33 of residence or a change for more than thirty (30) days of temporary domicile;

34 (4) 'Criminal justice agency' means a government agency, or any subunit
35 thereof, which is authorized by law to perform the administration of criminal
36 justice, and which allocates more than one-half (1/2) its annual budget to the

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1 administration of criminal justice;

2 (5) 'Local law enforcement agency having jurisdiction' means the chief
3 law enforcement officer of the municipality in which an offender resides or
4 expects to reside, or the county sheriff if the municipality does not have a
5 chief law enforcement officer or if an offender resides or expects to reside
6 in an unincorporated area of a county;

7 (6) 'Mental abnormality' means a congenital or acquired condition of a
8 person that affects the emotional or volitional capacity of the person in a
9 manner that presupposes that person to the commission of criminally sexual
10 acts to a degree that makes the person a menace to the health and safety of
11 other persons;

12 (7) 'Offender' means a sexually violent predator or a sex or child
13 offender and an adjudicated delinquent when ordered to register by the
14 juvenile court judge;

15 (8) 'Offense against a victim who is a minor' means:

16 (A) Kidnapping pursuant to § 5-11-102(a)~~(4)~~ when the victim is a
17 minor and the offender is not the parent of the victim;

18 (B) *False imprisonment in the first and second degree pursuant to*
19 *§ 5-11-103 and 5-11-104 when the victim is a minor and the offender is not the*
20 *parent of the victim*;

21 (C) Permanent detention or restraint pursuant to § 5-11-106 when
22 the victim is a minor and the offender is not the parent of the victim;

23 (D) Any sex offense when the victim is a minor;

24 (E) An attempt, solicitation, or conspiracy to commit any of the
25 offenses enumerated in this subdivision (8);

26 (F) An adjudication of guilt for an offense of the law of another
27 state, for a federal offense, for a tribal court offense, or for a military
28 offense, which is ~~substantially equivalent~~ similar to any of the offenses
29 enumerated in this subdivision (8) or when that adjudication of guilt requires
30 registration under another state's sex offender registration laws; or

31 (G) A violation of any former law of this state which is
32 substantially equivalent to any of the offenses enumerated in this subdivision
33 (8);

34 (9) 'Personality disorder' means an enduring pattern of inner
35 experience and behavior that deviates markedly from the expectation of the
36 person's culture, is pervasive and inflexible across a broad range of personal

1 and social situations, leads to clinically significant distress or impairment
2 in social, occupational or other important areas of functioning, is stable
3 over time, has onset in adolescence or early adulthood, is not better
4 accounted for as a manifestation or consequence of another mental disorder,
5 and is not due to the direct physiological effects of a substance or a general
6 medical condition;

7 (10) 'Predatory' means an act directed at a stranger or a person with
8 whom a relationship has been established or promoted for the primary purpose
9 of victimization;

10 (11) 'Sentencing court' means the judge of the court that sentenced the
11 offender for the sexually violent offense, the sex offense, or the offense
12 against a victim who is a minor that triggered registration under this
13 subchapter;

14 (12) 'Sex offense' means:

- 15 (A) Rape - § 5-14-103;
- 16 (B) Carnal abuse in the first degree - § 5-14-104;
- 17 (C) Carnal abuse in the second degree - § 5-14-105;
- 18 (D) Carnal abuse in the third degree - § 5-14-106;
- 19 (E) Sexual misconduct - § 5-14-107;
- 20 (F) Sexual abuse in the first degree - § 5-14-108;
- 21 (G) Sexual abuse in the second degree - § 5-14-109;
- 22 (H) Sexual solicitation of a child - § 5-14-110;
- 23 (I) Violation of minor in the first degree - § 5-14-120;
- 24 (J) Violation of a minor in the second degree - § 5-14-121;
- 25 (K) Incest - § 5-26-202;
- 26 (L) Engaging children in sexually explicit conduct for use in
27 visual or print medium - § 5-27-303;
- 28 (M) Transportation of minors for prohibited sexual conduct - § 5-
29 27-305;
- 30 (N) Employing or consenting to use of child in sexual performance
31 - § 5-27-402;
- 32 (O) Producing, directing or promoting sexual performance - § 5-
33 27-403;
- 34 (P) Promoting prostitution in the first degree - § 5-70-104;
- 35 (Q) Stalking - § 5-71-229;
- 36 (R) Indecent exposure to a person under the age of twelve (12)

1 years - § 5-14-112(b);

2 (S) Exposing another person to human immunodeficiency virus - §5-
3 14-123;

4 ~~(R)(T)~~ An attempt, solicitation, or conspiracy to commit any of
5 the offenses enumerated in this subdivision (12);

6 ~~(S)(U)~~ An adjudication of guilt for an offense of the law of
7 another state, for a federal offense, for a tribal court offense, or for
8 military offense, which is ~~substantially equivalent~~ similar to any of the
9 offenses enumerated in this subdivision (12) or when that adjudication of
10 guilt requires registration under another state's sex offender registration
11 laws; or

12 ~~(T)(V)~~ A violation of any former law of this state which is
13 substantially equivalent to any of the offenses enumerated in this subdivision
14 (12);

15 (13) 'Sex or child offender' means a person who is adjudicated guilty
16 of, adjudicated delinquent of and ordered to register by the juvenile court
17 judge, or acquitted on the grounds of mental disease or defect of a sex
18 offense or an offense against a victim who is a minor;

19 (14) 'Sexually violent offense' means any state, federal, tribal, or
20 military offense which includes a sexual act as defined in 18 U.S.C. § 2246(2)
21 with another person if the offense is nonconsensual or the person is under the
22 age of twelve (12);

23 (15) 'Sexually violent predator' means a person who has been
24 adjudicated guilty, adjudicated delinquent of 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; and

29 (16) 'Residency' means the place where a person lives notwithstanding
30 that there may be an intent to move or return at some future date to another
31 place."

32
33 SECTION 2. Arkansas Code Annotated § 12-12-904 is amended to read as
34 follows:

35 "12-12-904. Failure to register - Failure to comply with reporting
36 requirements.

1 (a)(1) A person who fails to register or who fails to report changes of
2 address as required under this subchapter shall be guilty of a Class D felony.

3 (2) It is an affirmative defense to prosecution if the delay in
4 reporting a change in address is caused by eviction, natural disaster or any
5 other unforeseen circumstance and if the person provides the new address to
6 the Arkansas Crime Information Center in writing no later than five (5)
7 business days after the offender establishes residency.

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

11
12 SECTION 3. Arkansas Code 12-12-905 is amended to read as follows:

13 "12-12-905. Applicability.

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

15 (1) A person who is adjudicated guilty of a sexually violent
16 offense, a sex offense, or an offense against a victim who is a minor, on or
17 after August 1, 1997;

18 (2) A person who is serving a sentence of incarceration,
19 probation, parole, or other form of community supervision as a result of an
20 adjudication of guilt for a sexually violent offense, a sex offense, or an
21 offense against a victim who is a minor, on August 1, 1997;

22 (3) A person who is committed following an acquittal on the
23 grounds of mental disease or defect for a sexually violent offense, a sex
24 offense, or an offense against a victim who is a minor, on or after August 1,
25 1997;

26 (4) A person who is serving a commitment as a result of an
27 acquittal on the grounds of mental disease or defect for a sexually violent
28 offense, a sex offense, or an offense against a victim who is a minor, on
29 August 1, 1997; ~~and~~

30 (5) A person who ~~is~~ was required to be registered under the
31 'Habitual Child Sex Offender Registration Act', ~~§ 12-12-901, et seq.~~
32 ~~[repealed]~~ Act 587 of 1987 which was repealed by Act 984 of 1997;

33 (6) A juvenile who has been ordered to register by juvenile court
34 judge after an adjudication of delinquency of a sexually violent offense, sex
35 offense, or an offense against a victim who is a minor, on or after September
36 1, 1999; and

1 (7) A juvenile who is serving an order of commitment, transfer of
2 legal custody, probation, court-approved voluntary service in the community,
3 juvenile detention, residential detention, or other form of commitment as
4 prescribed under § 9-27-330 after an adjudication of delinquency for a
5 sexually violent offense, a sex offense, or an offense against a victim who is
6 a minor, on September 1, 1999, and after being ordered to register by the
7 juvenile court judge having jurisdiction.

8 (b) A person who has been adjudicated guilty of a sexually violent
9 offense, a sex offense, or an offense against a victim who is a minor and
10 whose record of conviction will be expunged under the provisions of §§ 16-93-
11 301 through 16-93-303 is not relieved of the duty to register.

12 (1) However, a person's obligation to register under this
13 subchapter is terminated upon an expungement of the record by the court. The
14 burden shall be on the offender to file a petition of expungement with the
15 court having jurisdiction and to present that order to the Arkansas Crime
16 Information Center in order to stop the notification process.

17 (2) Upon receiving the order of expungement, the Arkansas Crime
18 Information Center shall notify the Arkansas Department of Correction and the
19 appropriate local law enforcement official that the person is no longer
20 required to be registered and to cease notification to the public."

21
22 SECTION 4. Arkansas Code Annotated § 12-12-906 is amended to read as
23 follows:

24 "12-12-906. Duty to register generally - Review of requirements with
25 offenders.

26 ~~(a) (1) An offender who is adjudicated guilty after August 1, 1997 shall~~
27 ~~be registered by the clerk of the sentencing court at the time of the~~
28 ~~offender's sentencing. After August 1, 1997, the sentencing court shall~~
29 ~~require an offender at the time of the offender's adjudication of guilt to~~
30 ~~complete the Sex Offender Registration Form in the format prepared by the~~
31 ~~director of the Arkansas Crime Information Center pursuant to § 12-12-908.~~

32 (2) Prior to release, the Department of Correction, or the Department
33 of Human Services, whichever is responsible for supervision, shall register an
34 offender who, on August 1, 1997, is confined in a correctional facility or
35 serving a commitment following acquittal on the grounds of mental disease or
36 defect.

1 (3) No later than thirty (30) days after August 1, 1997, the
2 Department of Correction or the Department of Community Punishment, whichever
3 is responsible for supervision, shall register an offender who, on August 1,
4 1997, is under supervision in the community on parole, furlough, work release,
5 or a similar program.

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

11 (5) An offender required to register on the basis of an
12 adjudication of guilt prior to August 1, 1997, who is not confined or under
13 supervision on August 1, 1997, shall register with the local law enforcement
14 agency having jurisdiction no later than thirty (30) days after August 1,
15 1997.

16 (6) An offender who is under federal supervision in the community
17 on parole, probation, suspended sentence, furlough, work release or a similar
18 program shall register with the local law enforcement agency having
19 jurisdiction no later than thirty (30) calendar days after September 1, 1999.

20 (7) A juvenile judge shall require an offender who is adjudicated
21 delinquent of a sexually violent offense, sex offense, or an offense against a
22 victim who is a minor after the effective date of this subdivision to submit
23 to an assessment by the Sex Offenders Assessment Committee at the time of
24 adjudication. The Committee shall submit its assessment and recommendation to
25 the juvenile judge and the juvenile judge may order registration with the
26 clerk of the juvenile court. Upon the decision by the juvenile judge to order
27 registration by the juvenile, the juvenile shall comply with all the
28 provisions of the Sex and Child Offender Registration Act.

29 (A) The juvenile court judge may order reassessment by the
30 Sex Offenders Assessment Committee any time during the juvenile judge's
31 jurisdiction over the juvenile.

32 (B) The juvenile court judge may order registration of the
33 juvenile adjudicated delinquent with the clerk of the juvenile court at any
34 time during the juvenile judge's jurisdiction over the juvenile.

35 (8) No later than thirty (30) calendar days after September 1,
36 1999, the Division of Youth Services or other appropriate agency which is

1 responsible for supervision, shall register an offender who, on the effective
 2 date of this subdivision, is under an order of commitment, transfer of legal
 3 custody, probation, court-approved voluntary service in the community,
 4 juvenile detention, residential detention, or other form of commitment as
 5 prescribed under § 9-27-330 after being adjudicated delinquent of a sexually
 6 violent offense, sex offense, or an offense against a victim who is a minor
 7 and after being ordered to register by the juvenile court judge having
 8 jurisdiction.

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

14 (2) Immediately prior to release or immediately following an
 15 escape, the Department of Correction or the Department of Human Services shall
 16 update the registration file of the offender who is to be released or who has
 17 escaped.

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

22 (A) Inform the offender of the duty to register and obtain the
 23 information required for registration as described in § 12-12-907;

24 (B) Inform the offender that if the offender changes address, the
 25 offender shall give the new address to the Arkansas Crime Information Center
 26 in writing no later than ten (10) days before the offender establishes
 27 residency or is temporarily domiciled at the new address;

28 (C) Inform the offender that if the offender changes address to
 29 another state, the offender shall register the new address with the Arkansas
 30 Crime Information Center and with a designated law enforcement agency in the
 31 new state not later than ten (10) days before the offender establishes
 32 residence or is temporarily domiciled in the new state, if the new state has a
 33 registration requirement;

34 (D) Obtain fingerprints and a photograph of the offender if these
 35 have not already been obtained in connection with the offense that triggered
 36 registration. ~~and~~ If the registration is performed by the sentencing court,

1 the arresting law enforcement agency shall provide the court with a copy of
2 the fingerprints and photograph of the offender.

3 (E) Require the offender to complete the entire registration
4 process, including but not limited to, requiring the offender to read and sign
5 a form stating that the duty of the person to register under this subchapter
6 has been explained;

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

12 (G) Inform an offender who has been granted probation, that
13 failure to comply with the provisions of this subchapter shall be grounds for
14 revocation of the offender's probation.

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

17 (A) Review with the offender the duty to register and obtain
18 current information required for registration as described in § 12-12-307;

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

23 (C) Review with the offender the requirement that if the offender
24 changes address to another state, the offender shall register the new address
25 with the Arkansas Crime Information Center and with a designated law
26 enforcement agency in the new state not later than ten (10) days before the
27 offender establishes residence or is temporarily domiciled in the new state,
28 if the new state has a registration requirement; ~~and~~

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

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

36 (d) When registering or updating the registration file of a sexually

1 violent predator, the Department of Correction, the Department of Community
2 Punishment, the Department of Human Services, ~~the clerk of the sentencing~~
3 court or the local law enforcement agency having jurisdiction shall, in
4 addition to the requirements of subdivision (c)(1) or (2) of this section,
5 obtain documentation of any treatment received for the mental abnormality or
6 personality disorder of the sexually violent predator."

7
8 SECTION 5. Arkansas Code Annotated § 12-12-907 is amended to read as
9 follows:

10 "12-12-907. Report to Arkansas Crime Information Center - Report to law
11 enforcement agency.

12 (a) Within three (3) days after registering or updating the
13 registration file of an offender, the Department of Correction, the Department
14 of Community Punishment, the Department of Human Services, ~~the clerk of the~~
15 sentencing court, or the local law enforcement agency having jurisdiction
16 shall report, by written or electronic means, all information obtained from
17 the offender and regarding the offender to the Arkansas Crime Information
18 Center. The Arkansas Crime Information Center shall immediately enter the
19 information into their record system for maintenance in a central registry and
20 notify the local law enforcement agency having jurisdiction.

21 (b) No later than ten (10) days after release from incarceration or
22 after the date of sentencing, an offender shall report to the local law
23 enforcement agency having jurisdiction and update the information in the
24 registration file. If the offender is not already registered, the local law
25 enforcement agency having jurisdiction shall register the offender in
26 accordance with this subchapter. Within three (3) days after registering an
27 offender or receiving updated registry information on an offender, the local
28 law enforcement agency having jurisdiction shall report, by written or
29 electronic means, all information obtained from the offender to the Arkansas
30 Crime Information Center."

31
32 SECTION 6. Arkansas Code Annotated § 12-12-908 is amended to read as
33 follows:

34 "12-12-908. Registration format - Requirements.

35 (a) Within sixty (60) days after August 1, 1997, the Director of the
36 Arkansas Crime Information Center shall prepare the format for registration as

1 required in subsection (b) of this section and shall provide instructions for
2 registration to each organized full-time municipal police department, county
3 sheriff's office, the Department of Correction, the Department of Community
4 Punishment, the Department of Human Services, and the Administrative Office of
5 the Courts.

6 (b) The registration file required by this subchapter shall include:

7 (1) The offender's full name and all aliases which the offender
8 has used or under which the offender has been known;

9 ~~(2) Age;~~

10 ~~(3)~~ (2) Date of birth;

11 ~~(4)~~ (3) Sex;

12 ~~(5)~~ (4) Race;

13 ~~(6)~~ (5) Height;

14 ~~(7)~~ (6) Weight;

15 ~~(8)~~ (7) Hair and eye color;

16 ~~(9)~~ (8) Address of any temporary residence;

17 ~~(10)~~ (9) Anticipated address of legal residence;

18 ~~(11)~~ (10) Driver's license number or state identification number,
19 if available;

20 ~~(12)~~ (11) Social security number;

21 ~~(13)~~ (12) Place of employment;

22 ~~(14)~~ (13) Photograph, if not already obtained;

23 ~~(15)~~ (14) Fingerprints, if not already obtained;

24 ~~(16)~~ (15) Date of arrest, arresting agency, offense for which
25 convicted or acquitted, and arrest tracking number for each adjudication of
26 guilt or acquittal on the grounds of mental disease or defect;

27 ~~(17)~~ (16) A brief description of the crime or crimes for which
28 registration is required;

29 ~~(18)~~ (17) The registration status of the offender as a sexually
30 violent predator or a sex or child offender;

31 ~~(19)~~ (18) A statement in writing signed by the offender
32 acknowledging that the offender has been advised of the duty to register
33 imposed by this subchapter; and

34 ~~(20)~~ (19) Any other information that the Arkansas Crime
35 Information Center deems necessary, including, but not limited to, criminal
36 and corrections records, nonprivileged personnel, treatment and abuse registry

1 records, and evidentiary genetic markers.”

2
3 SECTION 7. Arkansas Code Annotated § 12-12-911 is amended to read as
4 follows:

5 “12-12-911. Sexual and Child Offenders Registration Fund.

6 (a) There is hereby established on the books of the Treasurer of State,
7 Auditor of State, and Chief Fiscal Officer of the State a fund to be known as
8 the Sex and Child Offenders Registration Fund.

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

12 (c) Any unexpended balance of this fund shall be carried forward and
13 made available for the same purpose.”

14
15 SECTION 8. Arkansas Code Annotated § 12-12-913 is amended to read as
16 follows:

17 “12-12-913. Disclosure.

18 (a) Registration records maintained pursuant to this subchapter shall
19 be open to any criminal justice agency in this state, the United States, or
20 any other state. Registration records may also be open to government agencies
21 authorized by law to conduct confidential background checks.

22 (b) ~~(1) Local law enforcement agencies having jurisdiction shall~~
23 ~~disclose, in accordance with guidelines promulgated by the Child~~
24 ~~Abuse/Rape/Domestic Violence Commission~~ Sex Offenders Assessment Committee,
25 relevant and necessary information regarding offenders to the public when the
26 disclosure of such information is necessary for public protection.

27 (c) ~~(1) The Child Abuse/Rape/Domestic Violence Commission~~ Sex Offenders
28 Assessment Committee shall promulgate guidelines and procedures for the
29 disclosure of relevant and necessary information regarding offenders to the
30 public when the release of the information is necessary for public protection.
31 In developing the guidelines and procedures, the commission shall consult with
32 persons who, by experience or training, have a personal interest or
33 professional expertise in law enforcement, crime prevention, victim advocacy,
34 criminology, psychology, parole, public education, and community relations.

35 (2) The guidelines and procedures shall identify factors relevant
36 to an offender's future dangerousness and likelihood of reoffense or threat to

1 the community. The guidelines and procedures shall also address the extent of
2 the information to be disclosed and the scope of the community to whom
3 disclosure shall be made as these factors relate to the level of the
4 offender's dangerousness, the offender's pattern of offending behavior, and to
5 the need of community members for information to enhance their individual and
6 collective safety.

7 (3) The ~~Child Abuse/Rape/Domestic Violence Commission~~ Sex
8 Offenders Assessment Committee shall submit the proposed guidelines and
9 procedures to the House and Senate Committees on Public Health, Welfare and
10 Labor for their review and shall report to the committees every six (6) months
11 on the implementation of this section.

12 (d)(1) Local law enforcement agencies having jurisdiction that decide
13 to disclose information pursuant to this section shall make a good faith
14 effort to notify the public and residents at least fourteen (14) days before
15 an offender is released or placed into the community.

16 (2) If a change occurs in an ~~offender'~~ offender's release plan,
17 this notification provision shall not require an extension of the release
18 date.

19 (3) The Department of Correction and the Department of Human
20 Services shall, in conjunction with the notice provided under § 12-12-914,
21 make available to a local law enforcement agency having jurisdiction all
22 information that the departments' have concerning the offender, including
23 information on risk factors in the offender's history.

24 (e) Local law enforcement agencies having jurisdiction that decide to
25 disclose information under this section shall make a good faith effort to
26 conceal the identity of the victim or victims of the offender's offense. This
27 information is not subject to disclosure under the Arkansas Freedom of
28 Information Act.

29 (f) Local enforcement agencies having jurisdiction may continue to
30 disclose information on an offender under this section for as long as the
31 offender is required to be registered under this subchapter.

32 (g) The State Board of Education shall promulgate guidelines for the
33 disclosure to students and parents of information regarding an offender when
34 such information is released to a local school district by a local law
35 enforcement agency having jurisdiction. The board of directors of a local
36 school district shall adopt a written policy, in accordance with guidelines

1 promulgated by the state board, regarding the distribution to students and
2 parents of information regarding an offender.

3 (h) Nothing in this section shall be construed to prevent law
4 enforcement officers from notifying members of the public exposed to danger of
5 any persons that pose a danger under circumstances that are not enumerated in
6 this subchapter.

7 (i) Nothing in this subchapter shall be interpreted to make medical
8 records or treatment evaluations of the sex or child offender or sexually
9 violent predator subject to disclosure under the Arkansas Freedom of
10 Information Act."

11
12 SECTION 9. Arkansas Code Annotated § 12-12-914 is amended to read as
13 follows:

14 "12-12-914. Notice of release.

15 (a)(1) The Department of Correction shall provide notice, by written or
16 electronic means, to the Arkansas Crime Information Center of the anticipated
17 release from incarceration in a county or state penal institution of a person
18 serving a sentence for a sexually violent offense, a sex offense, or an
19 offense against a victim who is a minor.

20 (2) The Department of Human Services shall provide notice, by
21 written or electronic means, to the Arkansas Crime Information Center of the
22 anticipated release from incarceration of a person committed following an
23 acquittal on the grounds of mental disease or defect for a sexually violent
24 offense, a sex offense, or an offense against a victim who is a minor.

25 (b) If available, the notice required in subsection (a) of this section
26 shall be provided to the Arkansas Crime Information Center ninety (90) days
27 before the offender's anticipated release; provided, however, a good faith
28 effort shall be made to provide the notice at least thirty (30) days before
29 release. The notice shall include the person's name, identifying factors,
30 offense history, and anticipated future residence.

31 (c) Upon receipt of notice, the Arkansas Crime Information Center shall
32 provide notice by written or electronic means to:

33 (1) The local law enforcement agency having jurisdiction; and

34 (2) Such other state and local law enforcement agencies as
35 appropriate for public safety.

36 ~~(d) The Department of Correction shall notify the victim of the~~

1 ~~anticipated release of the offender if the victim of the sexually violent~~
2 ~~offense, the sex offense or the offense against a victim who is a minor has~~
3 ~~filed a request for such notice with the prosecuting attorney in the county~~
4 ~~where the offender was adjudicated guilty. Where possible, victim notification~~
5 pursuant to this subchapter shall be accomplished by means of the computerized
6 victim notification system established under Arkansas Code 12-12-1201. If
7 notification cannot be made throughout the system established under Arkansas
8 Code 12-12-1202, the Arkansas Department of Correction shall provide the
9 notification to the victim.

10
11 SECTION 10. Arkansas Code 12-12-917 is amended to read as follows:

12 "12-12-917. Evaluation protocol - Sexually violent predators - Juveniles
13 adjudicated delinquent- Examiners.

14 (a) The Child Abuse/Rape/Domestic Violence Commission Sex Offenders
15 Assessment Committee shall develop an evaluation protocol for preparing
16 reports to assist courts in making determinations whether or not a person
17 adjudicated guilty of a sexually violent offense should be considered a
18 sexually violent predator for purposes of this subchapter. The ~~commission~~
19 committee shall also establish qualifications for and qualify examiners to
20 prepare reports in accordance with the evaluation protocol.

21 (b) The Sex Offenders Assessment Committee shall develop an evaluation
22 protocol for preparing reports to assist the Sex Offenders Assessment
23 Committee in making determinations whether or not a juvenile adjudicated
24 delinquent of a sex offense or an offense against a victim who is a minor
25 should be registered under the provisions of this subchapter. The committee
26 shall also establish qualifications for and qualify examiners to prepare
27 reports in accordance with the evaluation protocol."

28
29 SECTION 11. Arkansas Code Annotated § 12-12-917 is amended to read as
30 follows:

31 "12-12-917. Evaluation protocol - Sexually violent predators -
32 Examiners.

33 The ~~Child Abuse/Rape/Domestic Violence Commission~~ Sex Offenders
34 Assessment Committee shall develop an evaluation protocol for preparing
35 reports to assist courts in making determinations whether or not a person
36 adjudicated guilty of a sexually violent offense should be considered a

1 sexually violent predator for purposes of this subchapter. The ~~commission~~
2 committee shall also establish qualifications for and qualify examiners to
3 prepare reports in accordance with the evaluation protocol."

4
5 SECTION 12. Arkansas Code Annotated § 12-12-918 is amended to read as
6 follows:

7 "12-12-918. Classification as sexually violent predator - Requirements.

8 (a) In order to classify a person as a sexually violent predator, a
9 prosecutor shall allege on the face of an information that he is seeking a
10 determination that the defendant is a sexually violent predator. If the
11 defendant is adjudicated guilty, the court shall enter an order directing an
12 examiner qualified by the ~~Child Abuse/Rape/Domestic Violence Commission~~ Sex
13 Offenders Assessment Committee to issue a report to the sentencing court that
14 recommends whether or not the defendant should be classified as a sexually
15 violent predator. Copies of the report shall be forwarded immediately to the
16 prosecutor and defense attorney. The report shall not be admissible for
17 purposes of sentencing. After sentencing, the court shall make a determination
18 regarding the defendant's status as a sexually violent predator.

19 (b) In order for the examiner qualified by the ~~Child~~
20 ~~Abuse/Rape/Domestic Violence Commission~~ Sex Offenders Assessment Committee to
21 prepare the report, the defendant shall be sent for evaluation to a facility
22 designated by the ~~Child Abuse/Rape/Domestic Violence Commission~~ Arkansas
23 Department of Correction. The cost of the evaluation, including the room and
24 board of the defendant, shall be ~~borne by the state~~ paid by the Arkansas
25 Department of Correction; however, when the evaluation of the defendant has
26 been completed, the county in which the defendant is being prosecuted, shall
27 procure the defendant from the designated facility within three (3) working
28 days. If the county fails to procure the defendant ~~with [sic]~~ within the
29 three-day period, the county shall bear all room and board costs on the fourth
30 and subsequent days."

31
32 SECTION 13. Arkansas Code Annotated § 12-12-919 is amended to read as
33 follows:

34 "12-12-919. Termination of obligation to register.

35 (a)(1) A sex or child offender required to register under this
36 subchapter may make application to the ~~circuit court in the county in which~~

1 ~~the sex or child offender resides~~ sentencing court if the person was sentenced
2 in the State of Arkansas or to the circuit court in the county in which the
3 sex or child offender resides if the offender was sentenced in another state
4 for an order terminating the child or sex offender's obligation to register.
5 The court shall hold a hearing on the application at which the applicant and
6 any interested persons may present witnesses and other evidence. Not less than
7 twenty (20) days prior to the date of the hearing on the application, a copy
8 of the application for termination of the obligation to register shall be
9 served on the prosecutor of the county in which the adjudication of guilt
10 triggering registration was obtained.

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

13 (A) The applicant has not ~~committed an offense~~ been
14 adjudicated guilty of an offense against a victim who is a minor or a sex
15 offense within fifteen (15) years after the person was released from prison or
16 other institution, placed on parole, supervised release, or probation; and

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

19 (b)(1) A sexually violent predator may make application to the
20 sentencing court for an order terminating the sexually violent predator's
21 obligation to register. The court shall hold a hearing on the application at
22 which the applicant and any interested persons may present witnesses and other
23 evidence. Not less than sixty (60) days prior to the date of the hearing on
24 the application, a copy of the application for termination of the obligation
25 to register shall be served on the prosecutor of the county in which the
26 adjudication of guilt triggering registration was obtained and on the members
27 of the ~~Child Abuse/Rape/Domestic Violence Commission~~ Arkansas Department of
28 Correction. Not less than ten (10) days prior to the date of the hearing on
29 the application, an examiner qualified by the ~~Child Abuse/Rape/Domestic~~
30 ~~Violence Commission~~ Sex Offenders Assessment Committee shall submit a report
31 to the court that recommends whether or not the applicant's status as a
32 sexually violent predator should be terminated.

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

35 (A) The applicant has not ~~committed an offense~~ been
36 adjudicated guilty of an offense against a victim who is a minor or a sex

1 offense within twenty (20) years after the person was released from prison or
2 other institution, placed on parole, supervised release, or probation; and

3 (B) The applicant no longer suffers from a mental
4 abnormality or personality disorder that would make the person likely to
5 engage in a predatory sexually violent offense.”

6
7 SECTION 14. Arkansas Code Annotated 12-12-920 is amended to read as
8 follows:

9 “12-12-920. Immunity from civil liability.

10 (a) Public officials, public employees, and public agencies are immune
11 from civil liability for good faith conduct under this subchapter.

12 (b) Nothing in this subchapter shall be deemed to impose any liability
13 upon or to give rise to a cause of action against any public official, public
14 employee, ~~or~~ and public agency for any discretionary decision to release
15 relevant and necessary information, unless it is shown that the official,
16 employee, or agency acted with gross negligence or in bad faith.

17 (c) The provisions of this section shall also apply to persons or
18 organizations assisting public officials, public employees, and public
19 agencies in performing their official duties upon a written request to assist
20 them by the public official, public employee or public agency.”

21
22 SECTION 15. Arkansas Code Title 12, Chapter 12, is amended to add the
23 following new subchapters:

24 “12-12-1301. (a) There is created effective July 1, 1999 the Sex
25 Offenders Assessment Committee which shall consist of eight (8) members as
26 follows:

27 (1) The Governor shall appoint, subject to confirmation by the
28 Senate:

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

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

31 (C) Two (2) members who are licensed mental health
32 professionals, at least one (1) of which shall have a demonstrated expertise
33 in the treatment of sex and child offenders;

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

35 (E) One (1) member who is a law enforcement officer.

36 (2) The Director of the Arkansas Department of Correction or the

1 Director's designee.

2 (b) Members appointed by the Governor shall be appointed for three (3)
3 year staggered terms. The staggered terms will be assigned by lot. The terms
4 shall commence on July 1 of each year. For the first three (3) years, two (2)
5 members' term shall expire on July 1, 2000, two (2) members' term shall expire
6 on July 1, 2001, and three (3) member's term shall expire on July 1, 2002.

7 (c) In the event of a vacancy of one of the members appointed by the
8 Governor for any reason other than expiration of a regular term, the vacancy
9 shall be filled for the unexpired portion of the term by appointment of the
10 Governor.

11 (d) The members of the committee appointed by the Governor may be
12 removed by the Governor for neglect of duty or malfeasance in office.

13 (e) Members of the committee appointed by the Governor shall not be
14 entitled to compensation for their services but may receive expense
15 reimbursement and a stipend not to exceed one hundred dollars (\$100.00) per
16 meeting in accordance with § 25-16-902 to be paid by the Arkansas Department
17 of Correction.

18
19 12-12-1302. (a) The committee shall meet within thirty (30) calendar
20 days after its appointment to organize as necessary to carry out its purposes
21 as prescribed by this subchapter. The Governor shall designate a person on
22 the Sex Offenders Assessment Committee to call and preside at the first
23 meeting.

24 (b)(1) At the initial organizational meeting of the Committee, the
25 members shall elect from among their number a chairperson and a vice-
26 chairperson.

27 (2) Annually thereafter, an organizational meeting shall be held
28 to elect the chairperson and vice-chairperson.

29 (3) The Director of the Arkansas Department of Correction or the
30 Director's designee shall serve as the executive secretary.

31 (4) A majority of the members of the Committee shall constitute a
32 quorum for the transaction of business.

33 (c) The Committee shall meet at least quarterly. Special meetings may
34 be called by the chair or as provided by the rules of the Committee.

35 (d) The executive secretary of the Committee shall keep full and true
36 records of all Committee proceedings and preserve all books, documents, and

1 papers relating to the business of the Committee.

2 (e) The meetings shall not be open to the public under the Freedom of
3 Information Act.

4 (f) The committee shall assist the Arkansas Department of Correction in
5 promulgating rules and regulations to ensure the proper implementation of this
6 Act.

7 (g) The Committee shall report in writing to the Governor and the
8 Legislative Council by July 31 of each year. The report shall contain a
9 summary of the proceedings of the Committee during the preceding fiscal year,
10 a detailed and itemized statement of all revenue and of all expenditures made
11 by or in behalf of the Committee, other information deemed necessary or
12 useful, and any additional information which may be requested by the Governor
13 and the Legislative Council.

14
15 12-12-1303. (a) The Arkansas Department of Correction shall assess on
16 a case-by-case basis the public risk posed by a sex or child offender or
17 sexually violent predator who is required to register under § 12-12-905. The
18 Committee shall assess those persons required to register under § 12-12-905
19 after the effective date of this section and those persons required to
20 register under § 12-12-905 who have not been assessed prior to the effective
21 date of this section.

22 (1) Adult offenders sentenced to the Arkansas Department of
23 Correction shall be assessed at the point of intake into the Department of
24 Correction, with that assessment being reviewed and updated periodically
25 during the course of incarceration. Offenders sentenced to 'life' or 'life
26 without parole' or 'death' shall be assessed only if being considered for
27 release through clemency.

28 (2) Adult offenders adjudicated guilty, but given suspended or
29 probated sentences shall be required to contact the Arkansas Department of
30 Correction at Pine Bluff within ten (10) days of adjudication to schedule an
31 assessment to be conducted at a location determined by the Arkansas Department
32 of Correction in consultation with the sentencing court..

33 (3) Offenders currently in the community who have not been
34 assessed and classified shall be identified by the Arkansas Crime Information
35 Center. The Department of Community Punishment shall notify offenders in a
36 particular area to present themselves at a Parole Office in their area or

1 other designated location for assessment by the Arkansas Department of
2 Correction. Failure to appear or failure to cooperate fully with assessment
3 shall result in a default classification of the highest risk category, and in
4 notification of the parole or probation officer, if applicable.

5 (b) The Arkansas Department of Correction shall have access to all
6 relevant records and information in the possession of public agencies or any
7 private entity contracting with a public agency relating to the sex or child
8 offender or sexually violent predator under review. The records and
9 information include, but are not limited to:

10 (1) Police reports;

11 (2) Statements of probable cause;

12 (3) Presentence investigations and reports;

13 (4) Complete judgments and sentences;

14 (5) Current classification referrals;

15 (6) Criminal history summaries;

16 (7) Violation and disciplinary reports;

17 (8) All psychological evaluations and psychiatric hospital
18 reports;

19 (9) Sex and child offender or sexually violent predator treatment
20 program reports;

21 (10) Juvenile records; and

22 (11) Victim Impact Statements.

23 (c)(1) Records and information obtained under this section shall not be
24 subject to the Freedom of Information Act, unless otherwise authorized by law.

25 (2) The sex or child offender or sexually violent predator shall
26 have access to records and information collected and maintained by the
27 Arkansas Department of Correction, unless the record or information received
28 contains the addresses of victims or persons who have made statements adverse
29 to the sex or child offender or sexually violent predator.

30 (d) In classifying the offender into a risk level for the purposes of
31 public notification under § 12-12-913 the Arkansas Department of Correction
32 shall review each sex or child offender or sexually violent predator under its
33 authority:

34 (1) Prior to the offender's release from confinement in a
35 correctional facility;

36 (2) Prior to the release of a person who has been committed

1 following an acquittal on the grounds of mental disease or defect;

2 (3) Upon an adjudication of delinquency of a sexually violent
3 offense, sex offense, or offense against a victim who is a minor;

4 (4) At any time during the juvenile court judge's jurisdiction
5 over a juvenile adjudicated delinquent of a sexually violent offense, sex
6 offense, or offense against a victim who is a minor;

7 (5) At the start of an offender's suspended sentence;

8 (6) At the start of the offender's term of community punishment;

9 or

10 (7) At the start of an offender's probation period.

11 (e)(1) The Arkansas Department of Correction shall issue to the local
12 law enforcement agency having jurisdiction, for their use in making public
13 notifications under § 12-12-913, the notice required by the regulations
14 promulgated by the Sex Offenders Assessment Committee regarding the sex or
15 child offender or sexually violent predator.

16 (2) The Post Prison Transfer Board shall receive copies of the
17 notice on inmates of the Arkansas Department of Correction.

18 (3) The Department of Community Punishment shall receive copies
19 of the notice on any individuals under its supervision.

20 (4) Notices shall be reported on standard forms for ease of
21 transmission and communication. The standard forms shall include, but not be
22 limited to:

23 (A) Registration information as required in 12-12-908,

24 (B) Risk level;

25 (C) Date of DNA sample,

26 (D) Psychological factors likely to affect sexual control,

27 (E) Victim target group preference,

28 (F) Treatment history and recommendations.

29 (G) Other relevant information deemed necessary by the Sex
30 Offenders Assessment Committee, or by professional staff doing Sex Offender
31 Assessments.

32 (5) The Arkansas Department of Correction shall ensure that the
33 notice is completed in its entirety. Law enforcement shall notify the
34 Arkansas Department of Correction if an offender has moved, then the Arkansas
35 Department of Correction has responsibility to track them down.

36 (6) Copies of relevant documents gathered for the assessment

1 notice may be attached to the notice as determined appropriate by professional
2 staff completing the assessment.

3 (7) All materials used in the assessment will be kept on file in
4 original form for one (1) year. After one (1) year the file may be stored
5 electronically.

6 (f) The Arkansas Department of Correction in cooperation with the Sex
7 Offenders Assessment Committee shall promulgate rules and regulations to
8 establish the appeal process for the assessment determinations.

9 (g)(1) A sex or child offender or sexually violent predator may request
10 the Committee to reassess the offender's assigned risk level after five (5)
11 years have elapsed since the Arkansas Department of Correction's initial risk
12 assessment and may renew the request once every five (5) years following
13 subsequent denials. In the request for reassessment, the offender shall list
14 the facts and circumstances which demonstrate that the offender no longer
15 poses the same degree of risk to the community.

16 (2) The Committee shall also take into consideration any
17 subsequent criminal acts by the sex or child offender or sexually violent
18 predator who has requested a reassessment."

19
20 SECTION 16. Arkansas Code 25-16-905 is amended to read as follows:

21 "25-16-905. Stipend - Authorization for \$100.

22 Each of the following state boards may, by a majority vote of the total
23 membership of the board cast during its first regularly scheduled meeting of
24 each calendar year, authorize payment to its members of a stipend not to
25 exceed one hundred dollars (\$100) per meeting attended, and the board members
26 shall receive no other compensation, expense reimbursement, or in-lieu-of
27 payments except as provided in § 25-16-902:

28 (1) Arkansas State Board of Dental Examiners; ~~and~~

29 (2) Arkansas State Medical Board; and

30 (3) The Sex Offenders Assessment Committee.

31
32 SECTION 17. All provisions of this Act of a general and permanent nature
33 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
34 Revision Commission shall incorporate the same in the Code.

35
36 SECTION 18. If any provision of this Act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the Act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 Act are declared to be severable.

5
6 SECTION 19. All laws and parts of laws in conflict with this Act are
7 hereby repealed.

8
9 SECTION 20. EMERGENCY CLAUSE. It is hereby found and determined by the
10 Eighty-second General Assembly, that the need to register sex or child
11 offenders or sexually violent predators is necessary to ensure the safety of
12 the citizens of Arkansas. Currently, some sex or child offenders or sexually
13 violent predators do not fall within the provisions of the current law and are
14 therefore not required to be registered. Therefore, an emergency is declared
15 to exist and this act being immediately necessary for the preservation of the
16 public peace, health and safety shall become effective on September 1, 1999.
17 Section 15 and Section 17 of this act shall become effective on July 1, 1999.

18 /s/ Ferrell

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21 APPROVED: 4/12/1999
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