

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 2459

"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE CONCERNING
THE SEX OFFENDER REGISTRATION ACT OF 1997."

Amendment No. 3 to House Bill No. 2459.

Amend House Bill No. 2459 as engrossed, H3/13/01:

Delete Section 2 and substitute

"SECTION 2. Arkansas Code 12-12-903 is amended to read as follows:
12-12-903. Definitions.

For the purposes of this subchapter:

- (1) "Adjudication of guilt" or other words of similar import means a:
- (A) Plea of guilty;
 - (B) Plea of nolo contendere;
 - (C) Negotiated plea;
 - (D) Finding of guilt by a judge; or
 - (E) Finding of guilt by a jury;

(2)(A) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders.

(B) The administration of criminal justice also includes criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(3) "Aggravated Sex Offense" means offenses in the Arkansas Code substantially equivalent to "aggravated sexual abuse" as defined in 18 U.S.C. 2241 as it existed on January 1, 2001 which principally encompasses:

(A) Engaging in sexual acts involving penetration with victims of any age through the use of force or the threat of serious violence; or

(B) Engaging in sexual acts involving the penetration of victims below the age of twelve (12);

~~(3)~~(4) "Change of address" or other words of similar import means a change of residence or a change for more than thirty (30) days of temporary domicile; change of location of employment, education or training, or any other change that alters where an offender regularly spends a substantial amount of time.

~~(4)~~(5) "Criminal justice agency" means a government agency or any subunit thereof which is authorized by law to perform the administration of criminal justice and which allocates more than one-half (1/2) of its annual

budget to the administration of criminal justice;

~~(5)~~(6) "Local law enforcement agency having jurisdiction" means the:

(A) Chief law enforcement officer of the municipality in which an offender resides or expects to reside; or

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

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

~~(7)~~ "Offender" means:

~~(A) A sexually violent predator;~~

~~(B) A sex or child offender; or~~

~~(C) An adjudicated delinquent when ordered to register by the juvenile court judge;~~

~~(8)~~ "Offense against a victim who is a minor" means:

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

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

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

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

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

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

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

~~(9)~~(8) "Personality disorder" means an enduring pattern of inner experience and behavior that:

(A) Deviates markedly from the expectation of the person's culture;

(B) Is pervasive and inflexible across a broad range of personal and social situations;

(C) Leads to clinically significant distress or impairment in social, occupational, or other important areas of functioning;

(D) Is stable over time;

(E) Has its onset in adolescence or early adulthood;

(F) Is not better accounted for as a manifestation or consequence of another mental disorder; and

(G) Is not due to the direct physiological effects of a substance or a general medical condition;

~~(10)~~(9) "Predatory" means an act directed at a stranger or a person with whom a relationship has been established or promoted for the primary

purpose of victimization of that person or individuals over whom that person has control;

~~(11)~~(10) "Residency" means the place where a person lives notwithstanding that there may be an intent to move or return at some future date to another place; residency also includes place of employment, training, or education;

~~(12)~~(11) "Sentencing court" means the judge of the court that sentenced the offender for the sex offense.

~~(A) The sexually violent offense;~~

~~(B) The sex offense; or~~

~~(C) The offense against a victim who is a minor that triggered registration under this subchapter;~~

~~(13)~~(12) "Sex offense" for the purposes of this subchapter means includes, but is not limited to:

(A)(i) Rape, § 5-14-103;

(ii) Carnal abuse in the first degree, § 5-14-104;

(iii) Carnal abuse in the second degree, § 5-14-105;

(iv) Carnal abuse in the third degree, § 5-14-106;

(v) Sexual misconduct, § 5-14-107;

(vi) Sexual abuse in the first degree, § 5-14-108;

(vii) Sexual abuse in the second degree, § 5-14-109;

(viii) Sexual solicitation of a child, § 5-14-110;

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

(x) Violation of a minor in the second degree, § 5-14-121;

(xi) Incest, § 5-26-202;

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

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

(xiv) Employing or consenting to use of child in sexual performance, § 5-27-402;

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

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

~~(xvi)~~(xvii) Promoting prostitution in the first degree, § 5-70-104;

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

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

~~(xix)~~(xx) Exposing another person to human immunodeficiency virus, when ordered by the sentencing court to register as a sex offender, § 5-14-123;

~~(xx)~~(xxi) Kidnapping pursuant to § 5-11-102(a) when the victim is a minor and the offender is not the parent of the victim.

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

(xxiii) Permitting abuse of a child pursuant to § 5-27-221; or

(xxiv) The sentencing court has the authority to order the

registration of any offender shown in court to have the intent to commit a sex offense, even though the offense is not enumerated above. This may include offenses pled down from sex offenses, or offenses that were a prelude to a sex offense when the offender was prevented from attempting or carrying out the sex offense, and offenses enacted or amended at a later date by the legislature unless the legislature expresses its intent not to consider the offense to be a sex offense;

(B) An attempt, solicitation, or conspiracy to commit any of the offenses enumerated in subdivision ~~(13)(A)~~(12)(A) of this section;

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

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

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

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

~~(14)~~(13) "Sex ~~or child~~ offender" means a person who is adjudicated guilty ~~of~~, adjudicated delinquent ~~of~~ and ordered to register by the juvenile court judge, or acquitted on the grounds of mental disease or defect of a sex offense, ~~or an offense against a victim who is a minor~~ Unless otherwise specified, "sex offender" includes those individuals classified by the court as "sexually violent predators";

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

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

~~(15)~~(16) "Sexually violent offense" means any state, federal, tribal, or military offense which includes a sexual act as defined in 18 U. S. C. § ~~2246(2)~~ §§ 2241 and 2242, as they existed on January 1, 2001, with another person if the offense is nonconsensual ~~or the person is under the age of twelve~~ (12) regardless of the age of the victim; and

~~(16)~~(17) "Sexually violent predator" means a person who has been adjudicated guilty, adjudicated delinquent of and ordered to register by the juvenile court judge, or acquitted on the grounds of mental disease or defect of a sexually violent offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory sexually violent offenses. "

AND

Delete Section 4 and substitute

"SECTION 4. Arkansas Code 12-12-905 is amended to read as follows:
12-12-905. Applicability.

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

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

~~(A) A sexually violent offense;~~

- ~~(B) A sex offense; or~~
- ~~(C) An offense against a victim who is a minor;~~

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

- ~~(A) A sexually violent offense;~~
- ~~(B) A sex offense; or~~
- ~~(C) An offense against a victim who is a minor;~~

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

- ~~(A) A sexually violent offense;~~
- ~~(B) A sex offense; or~~
- ~~(C) An offense against a victim who is a minor;~~

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

- ~~(A) A sexually violent offense;~~
- ~~(B) A sex offense; or~~
- ~~(C) An offense against a victim who is a minor;~~

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

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

- ~~(A) A sexually violent offense;~~
- ~~(B) A sex offense; or~~
- ~~(C) An offense against a victim who is a minor; and~~

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

(b)(1) A person who has been adjudicated guilty of ~~a sexually violent offense, a sex offense, or an offense against a victim who is a minor~~ and whose record of conviction will be expunged under the provisions of §§ 16-93-301 - 16-93-303 is not relieved of the duty to register.

~~(2)(A)(i) However, a person's obligation to register under this subchapter is terminated upon an expungement of the record by the court.~~

~~(ii) The burden shall be on the offender to file a petition of expungement with the court having jurisdiction and to present that order to the Arkansas Crime Information Center in order to stop the notification process.~~

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

Delete Section 5 and substitute

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

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

~~(a)(1)(A) At the time of an offender's adjudication of guilt, the sentencing court shall require the offender to complete the sex offender registration form in the format prepared by the Director of the Arkansas Crime Information Center pursuant to § 12-12-908.~~

(A) At the time of adjudication of guilt, the sentencing court shall enter on the Judgment and Commitment or Judgment and Disposition form whether or not the offender is required to register as a sex offender.

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

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

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

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

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

(B)(1) All persons living in this state, who were required to register as a sex offenders in the jurisdiction in which they were adjudicated guilty of a sex offense, are required to register as sex offenders in this state whether living, working or attending school or other training in Arkansas.

(2) Non-resident workers or students who enter the state for fourteen (14) or more consecutive days to work or study, or who enter the state for an aggregate of thirty (30) days or more a year, are required to register in compliance with 64 Fed. Reg. 585 2nd as it existed on January 1, 2001.

(C) A sex offender sentenced and required to register outside of Arkansas, whether as an adult or juvenile, must submit to reassessment by Sex Offender Screening and Risk Assessment, provide a DNA sample if a sample is not already accessible to the State Crime Lab, and pay the mandatory fee of two hundred fifty (\$250) to the DNA Detection Fund established under §§ 12-12-1101 through 12-12-1120.

(3)(A) After September 1, 1999, a juvenile judge shall require ~~an~~ a sex offender to submit at the time of adjudication of a sex offense to an assessment by the ~~Sex Offenders Assessment Committee~~ Sex Offender Screening and Risk Assessment ~~who is adjudicated delinquent of:~~

~~(i) A sexually violent offense;~~

~~(ii) A sex offense; or~~

~~(iii) An offense against a victim who is a minor.~~

(B)(i) The ~~committee~~ Sex Offender Screening and Risk Assessment shall submit its assessment and recommendation to the juvenile judge and the juvenile judge may order registration ~~with the clerk of the juvenile court~~ by so indicating on the on the proper form.

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

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

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

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

(2) Immediately prior to release or immediately following an escape or absconding supervision, the Department of Correction, the Department of Community Punishment, or the Department of Human Services shall update the registration file of the sex offender who is to be released or who has escaped or absconded supervision.

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

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

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

(C) Inform the offender that if the offender changes ~~address~~ residency to another state, or enters another state for fourteen (14) consecutive days or more or for an aggregate of thirty (30) days or more a year, the offender must also register in that state regardless of permanent residency, the offender shall register the new address, place of employment, education, or training with the Arkansas Crime Information Center and with a designated law enforcement agency in the new state not later than ten (10) days before the offender establishes residence or is temporarily domiciled in the new state, ~~if the new state has a registration requirement~~;

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

(ii) ~~If the registration is performed by the sentencing court, the arresting law enforcement agency shall provide the court with a copy of the fingerprints and a photograph of the offender.~~ Obtain

a DNA sample, if one has not already been provided;

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

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

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

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

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

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

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

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

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

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

AND

Page 18, line 8, delete "or child"

AND

Delete Section 12 and substitute

"SECTION 12. Arkansas Code 12-12-917 is amended to read as follows:
12-12-917. Evaluation protocol - Sexually violent predators -
Juveniles adjudicated delinquent - Examiners.

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

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

(b)(1) The Sex Offenders Assessment Committee shall develop an evaluation protocol for preparing reports to assist the ~~Sex Offenders Assessment Committee~~ juvenile division of circuit court in making determinations whether or not a juvenile adjudicated delinquent of a sex offense ~~or an offense against a victim who is a minor~~ should be registered under the provisions of this subchapter.

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

AND

Delete Section 14 and substitute

"SECTION 14. Arkansas Code 12-12-919 is amended to read as follows:
12-12-919. Termination of obligation to register.

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

~~(a)(1)(A) (b)(1)(A)(i) A Any other sex or child offender required to register under this subchapter may make application for an order terminating the child or sex offender's obligation to register to the sentencing court, if the person was sentenced in the State of Arkansas, or to the circuit court in the county in which the sex or child offender resides, if the offender was sentenced in another state.~~

(ii) Sex offenders sentenced in other states but permanently residing in Arkansas may make an application for an order terminating the obligation to register to the court of the county in which they reside.

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

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

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

(A) The applicant, within fifteen (15) years after the

person was released from prison or other institution, placed on parole, supervised release, or probation, has not been adjudicated guilty of: a sex offense, and

~~(i) An offense against a victim who is a minor; or~~

~~(ii) A sex offense; and~~

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

~~(b)(1)(A) A sexually violent predator may make application to the sentencing court for an order terminating the sexually violent predator's obligation to register.~~

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

~~(ii) No fewer than sixty (60) days prior to the date of the hearing on the application, a copy of the application for termination of the obligation to register shall be served on the prosecutor of the county in which the adjudication of guilt triggering registration was obtained and on the members of the Department of Correction.~~

~~(iii) No fewer than ten (10) days prior to the date of the hearing on the application, an examiner qualified by the Sex Offenders Assessment Committee shall submit a report to the court that recommends whether or not the applicant's status as a sexually violent predator should be terminated.~~

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

~~(A) The applicant, within twenty (20) years after the person was released from a prison or other institution or placed on parole, supervised release, or probation has not been adjudicated guilty of an offense against a victim who is a minor or a sex offense; and~~

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

The Amendment was read _____

By: Representative Carson

PBB/RTK - 032220011319

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Chief Clerk