

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4
5 By: Representative Neal
6 By: Senator J. Woods
7

A Bill

HOUSE BILL 1409

For An Act To Be Entitled

9 AN ACT CONCERNING THE EVALUATION PROTOCOL FOR
10 ASSESSING PERSONS WHO POTENTIALLY WILL BE CLASSIFIED
11 AS A SEXUALLY DANGEROUS PERSON; TO MAKE TECHNICAL
12 CHANGES IN THE CHANGE IN TERMINOLOGY THROUGHOUT THE
13 CODE; AND FOR OTHER PURPOSES.
14
15

Subtitle

16 CONCERNING THE EVALUATION PROTOCOL FOR
17 ASSESSING PERSONS WHO POTENTIALLY WILL BE
18 CLASSIFIED AS A SEXUALLY DANGEROUS
19 PERSON; TO MAKE TECHNICAL CHANGES IN THE
20 CHANGE IN TERMINOLOGY THROUGHOUT THE
21 CODE.
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25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
26

27 SECTION 1. Arkansas Code § 12-12-903(13), concerning the definition of
28 "sex offender" under the Sex Offender Registration Act, is amended to read as
29 follows:

30 (13)(A) "Sex offender" means a person who is adjudicated guilty of a
31 sex offense or acquitted on the grounds of mental disease or defect of a sex
32 offense.

33 (B) Unless otherwise specified, "sex offender" includes those
34 individuals classified by the court as a "sexually violent predators
35 dangerous person";
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1 SECTION 2. Arkansas Code § 12-12-903(15), concerning the definition of
2 "sexually violent predator" under the Sex Offender Registration Act, is
3 amended to read as follows:

4 (15) "~~Sexually violent predator~~ dangerous person" means a person who
5 has been adjudicated guilty or acquitted on the grounds of mental disease or
6 defect of a sexually violent offense and who suffers from a mental
7 abnormality or personality disorder that makes the person likely to engage in
8 predatory sexually violent offenses.

9
10 SECTION 3. Arkansas Code § 12-12-906(a)(1)(A)(i)(c), concerning a duty
11 to register as a sex offender, is amended to read as follows:

12 (c) Sex offender has been classified as a
13 sexually ~~violent predator~~ dangerous person.

14
15 SECTION 4. Arkansas Code § 12-12-906(a)(1)(C)(i), concerning a duty to
16 register as a sex offender, is amended to read as follows:

17 (D)(i) The Arkansas State Hospital shall ensure that the
18 sex offender registration form has been completed for any sex offender found
19 not guilty by reason of insanity and shall arrange an evaluation by ~~Sex~~
20 ~~Offender Screening and Risk~~ Community Notification Assessment.

21
22 SECTION 5. Arkansas Code § 12-12-906(a)(2)(C)(i), concerning a duty to
23 register as a sex offender, is amended to read as follows:

24 (i) Submit to assessment by ~~Sex Offender Screening~~
25 ~~and Risk~~ Community Notification Assessment;

26
27 SECTION 6. Arkansas Code § 12-12-906(d), concerning a duty to register
28 as a sex offender, is amended to read as follows:

29 (d) When registering or updating the registration file of a sexually
30 ~~violent predator~~ dangerous person, in addition to the requirements of
31 subdivision (c)(1) or (2) of this section, the sentencing court, the
32 Department of Correction, the Department of Community Correction, the
33 Arkansas State Hospital, the Department of Human Services, or the local law
34 enforcement agency having jurisdiction shall obtain documentation of any
35 treatment received for the mental abnormality or personality disorder of the
36 sexually ~~violent predator~~ dangerous person.

1
2 SECTION 7. Arkansas Code § 12-12-906(h) and (i), concerning a duty to
3 register as a sex offender, are amended to read as follows:

4 (h)(1) A sexually ~~violent predator~~ dangerous person subject to
5 lifetime registration under § 12-12-919 shall report in person every three
6 (3) months after registration to the local law enforcement agency having
7 jurisdiction to verify registration.

8 (2) The local law enforcement agency having jurisdiction may
9 determine the appropriate times and days for reporting by the sexually
10 ~~violent predator~~ dangerous person, and the determination shall be consistent
11 with the reporting requirements of subdivision (h)(1) of this section.

12 (3) Registration verification shall include reporting any change
13 to the following information concerning the sexually ~~violent predator~~
14 dangerous person:

15 (A) Name;

16 (B) Social security number;

17 (C) Age;

18 (D) Race;

19 (E) Gender;

20 (F) Date of birth;

21 (G) Height;

22 (H) Weight;

23 (I) Hair and eye color;

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

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

29 (K) Date and place of any employment;

30 (L) Vehicle make, model, color, and license tag number
31 that the sexually ~~violent predator~~ dangerous person owns, operates, or to
32 which he or she has access;

33 (M)(i) Fingerprints.

34 (ii) If the local law enforcement agency having
35 jurisdiction cannot confirm that the sexually ~~violent predator~~ dangerous
36 person's fingerprints are contained in the automated fingerprint

1 identification system, the local law enforcement agency having jurisdiction
 2 shall:

3 (a) Take the sexually ~~violent-predator~~
 4 dangerous person's fingerprints; and

5 (b) Submit the fingerprints to the center and
 6 to the Department of Arkansas State Police;

7 (N)(i) Photograph.

8 (ii) The local law enforcement agency having
 9 jurisdiction shall take a photograph of the sexually ~~violent-predator~~
 10 dangerous person at each registration verification and submit the photograph
 11 to the center;

12 (O) All computers or other devices with Internet
 13 capability to which the sex offender has access;

14 (P) All email addresses used by the sex offender; and

15 (Q) All user names, screen names, or instant message names
 16 that are used by the sex offender to communicate in real time with another
 17 person using the Internet.

18 (4) If the sexually ~~violent-predator~~ dangerous person is
 19 enrolled or employed at an institution of higher education in this state, the
 20 sexually ~~violent-predator~~ dangerous person shall also report to the local law
 21 enforcement agency having jurisdiction:

22 (A) The name and address of each institution of higher
 23 education where he or she is enrolled or employed, including each campus
 24 attended;

25 (B) The county where each campus is located; and

26 (C) His or her enrollment or employment status.

27 (5) If the place of residence of the sexually ~~violent-predator~~
 28 dangerous person is a motor vehicle, trailer, mobile home, modular home, or
 29 manufactured home, the sexually ~~violent-predator~~ dangerous person shall
 30 report the following information concerning the motor vehicle, trailer,
 31 mobile home, modular home, or manufactured home:

32 (A) Vehicle identification number;

33 (B) License tag number;

34 (C) Registration number; and

35 (D) A description, including color scheme.

36 (6) If the place of residence of the sexually ~~violent-predator~~

1 dangerous person is a vessel, live-aboard vessel, or houseboat, the sexually
 2 ~~violent predator~~ dangerous person shall report the following information
 3 concerning the vessel, live-aboard vessel, or houseboat:

- 4 (A) Hull identification number;
- 5 (B) Manufacturer's serial number;
- 6 (C) Name;
- 7 (D) Registration number; and
- 8 (E) A description, including color scheme.

9 (i) Within three (3) days after verifying the registration of a sex
 10 offender under subsection (g) of this section or a sexually ~~violent predator~~
 11 dangerous person under subsection (h) of this section, the local law
 12 enforcement agency having jurisdiction shall report by written or electronic
 13 means all information obtained from or provided by the sex offender or
 14 sexually ~~violent predator~~ dangerous person to the center.

15
 16 SECTION 8. Arkansas Code § 12-12-907(b)(3), concerning reporting to
 17 the Arkansas Crime Information Center, is amended to read as follows:

18 (3) The center shall verify the address of a sexually violent
 19 ~~predators~~ dangerous person on a quarterly basis and the address of all other
 20 sex offenders on a semiannual basis.

21
 22 SECTION 9. Arkansas Code § 12-12-908(b)(17), concerning registration
 23 requirements for sex offenders, is amended to read as follows:

24 (17) The registration status of the sex offender as a sexually
 25 ~~violent predator~~ dangerous person, aggravated sex offender, or sex offender;

26
 27 SECTION 10. Arkansas Code § 12-12-909(a)(5), concerning registration
 28 requirements for sex offenders, is amended to read as follows:

29 (5) Subdivision (a)(1) of this section applies to a person
 30 required to register as a sexually ~~violent predator~~ dangerous person, except
 31 that the person shall verify the registration every ninety (90) days after
 32 the date of the initial release or commencement of parole.

33
 34 SECTION 11. Arkansas Code § 12-12-913(i), concerning disclosure of
 35 information concerning sex offenders, is amended to read as follows:

36 (i) The medical records or treatment evaluations of a sex offender or

1 sexually ~~violent predator~~ dangerous person are not subject to disclosure
2 under the Freedom of Information Act of 1967, § 25-19-101 et seq.

3
4 SECTION 12. Arkansas Code § 12-12-913(j)(1)(A), concerning disclosure
5 of information concerning sex offenders, is amended to read as follows:

6 (j)(1)(A) The following information concerning a registered sex
7 offender who is classified as a level 3 or level 4 offender by the ~~Sex~~
8 ~~Offender Screening and Risk~~ Community Notification Assessment shall be made
9 public:

10
11 SECTION 13. Arkansas Code § 12-12-913(j)(1)(B), concerning disclosure
12 of information concerning sex offenders, is amended to read as follows:

13 (B) If a registered sex offender was eighteen (18) years of age
14 or older at time of the commission of the sex offense that required
15 registration under this subchapter and the victim of the sex offense was
16 fourteen (14) years of age or younger and the registered sex offender is
17 classified as a level 2 offender by the Sex Offender Screening and Risk
18 Community Notification Assessment, the following information concerning the
19 registered sex offender shall be made public:

20
21 SECTION 14. Arkansas Code § 12-12-913(k)(1), concerning disclosure of
22 information concerning sex offenders, is amended to read as follows:

23 (1) High-risk or sexually ~~violent predators~~ dangerous persons,
24 risk level 3 and level 4; or

25
26 SECTION 15. Arkansas Code 12-12-917 is amended to read as follows:

27 12-12-917. Evaluation protocol – Sexually ~~violent predators~~ dangerous
28 persons – Juveniles adjudicated delinquent – Examiners.

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

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

1 (b)(1) The committee shall cause an assessment to be conducted on a
2 case-by-case basis of the public risk posed by a sex offender or sexually
3 ~~violent predator~~ dangerous person:

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

6 (B) For whom the Arkansas Crime Information Center has no
7 record of an assessment's being done and a risk level established subsequent
8 to August 1, 1997.

9 (2)(A)(i) An adult offender convicted of an offense described in
10 42 U.S.C. § 14071 et seq., as it existed on March 1, 2003, Pub. L. No. 109-
11 248, as it existed on January 1, 2007, or § 12-12-903(12) shall be assessed.

12 (ii)(a) Subject to subdivision (c)(1) of this
13 section, the prosecuting attorney and any law enforcement agency shall
14 furnish the file relating to the offender to ~~Sex Offender Screening and Risk~~
15 ~~Assessment~~ Community Notification Assessment at the Department of Correction
16 within thirty (30) days of an offender's adjudication of guilt.

17 (b)(1) The prosecuting attorney shall make a
18 copy of any relevant records concerning the offender and shall forward the
19 copied relevant records to ~~Sex Offender Screening and Risk Assessment~~
20 Community Notification Assessment within thirty (30) days of the
21 adjudication.

22 (2) The relevant records include, but
23 are not limited to:

24 (A) Arrest reports;
25 (B) Incident reports;
26 (C) Offender statements;
27 (D) Judgment and disposition
28 forms;
29 (E) Medical records;
30 (F) Witness statements; and
31 (G) Any record considered relevant
32 by the prosecuting attorney.

33 (B) A sex offender sentenced to life, life without parole,
34 or death shall be assessed only if the sex offender is being considered for
35 release.

36 (3) A sex offender currently in the state who has not been

1 assessed and classified shall be identified by the center.

2 (4)(A) If a sex offender fails to appear for assessment, is
 3 aggressive, threatening, or disruptive to the point that ~~Sex Offender~~
 4 ~~Screening and Risk Assessment~~ Community Notification Assessment staff cannot
 5 proceed with the assessment process, or voluntarily terminates the assessment
 6 process after having been advised of the potential consequences:

7 (i) The sex offender shall be classified as a risk
 8 level 3 or referred to the Sex Offender Assessment Committee as a risk level
 9 4; and

10 (ii) The parole or probation officer, if applicable,
 11 shall be notified.

12 (B) A sex offender has immunity for a statement made by
 13 him or her in the course of assessment with respect to prior conduct under
 14 the immunity provisions of § 16-43-601 et seq.

15 (C) Assessment personnel shall report ongoing child
 16 maltreatment as required under the Child Maltreatment Act, § 12-18-101 et
 17 seq.

18 (c)(1) To the extent permissible and under the procedures established
 19 by state and federal regulations, public agencies shall provide the committee
 20 access to all relevant records and information in the possession of public
 21 agencies or any private entity contracting with a public agency relating to
 22 the sex offender or sexually ~~violent predator~~ dangerous person under review.

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

- 24 (A) Police reports;
- 25 (B) Statements of probable cause;
- 26 (C) Presentence investigations and reports;
- 27 (D) Complete judgments and sentences;
- 28 (E) Current classification referrals;
- 29 (F) Criminal history summaries;
- 30 (G) Violation and disciplinary reports;
- 31 (H) All psychological evaluations and psychiatric hospital
 32 reports;
- 33 (I) Sex offender or sexually ~~violent predator~~ dangerous
 34 person treatment program reports;
- 35 (J) Juvenile court records;
- 36 (K) Victim impact statements;

1 (L) Investigation reports to the Child Abuse Hotline, the
2 Division of Children and Family Services of the Department of Human Services,
3 and any entity contracting with the Department of Human Services for
4 investigation or treatment of sexual or physical abuse or domestic violence;
5 and

6 (M) Statements of medical providers treating victims of
7 sex offenses indicating the extent of injury to the victim.

8 (d)(1) Records and information obtained under this section shall not
9 be subject to the Freedom of Information Act of 1967, § 25-19-101 et seq.,
10 unless otherwise authorized by law.

11 (2)(A)(i) The sex offender or sexually ~~violent predator~~
12 dangerous person shall have access to records and information generated and
13 maintained by the committee.

14 (ii) These records shall include any reports of the
15 assessment and the tape of the interview but do not include restricted source
16 documents of commercial psychological tests or working notes of staff.

17 (B)(i) Unless otherwise ordered by a court of competent
18 jurisdiction, records and information generated by other agencies and
19 obtained under this section shall not be available to the sex offender or
20 sexually ~~violent predator~~ dangerous person except through the agency or
21 individual having primary custody of the records.

22 (ii) Upon request, the sex offender shall be given a
23 list of the records or information obtained.

24 (C) If the record or information generated contains the
25 address of a victim or a person who has made a statement adverse to the sex
26 offender or sexually ~~violent predator~~ dangerous person, the address shall be
27 redacted and the sex offender or sexually ~~violent predator~~ dangerous person
28 shall have access to records and information other than the identity and
29 address.

30 (e) In classifying the sex offender into a risk level for the purposes
31 of public notification under § 12-12-913, the committee, through its staff,
32 shall review each sex offender or sexually ~~violent predator~~ dangerous person
33 under its authority:

34 (1) Prior to the sex offender's release for 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) At the start of a sex offender's suspended imposition of
3 sentence; or

4 (4) At the start of a sex offender's probation period.

5 (f)(1)(A) The committee shall issue the offender fact sheet to the
6 local law enforcement agency having jurisdiction.

7 (B) The offender fact sheet is provided to assist the
8 local law enforcement agency having jurisdiction in its task of community
9 notification.

10 (2) The committee shall provide the Parole Board with copies of
11 the offender fact sheet on inmates of the Department of Correction.

12 (3) The committee shall provide the Department of Community
13 Correction with copies of the offender fact sheet on any sex offender under
14 the Department of Community Correction's supervision.

15 (4)(A)(i) The offender fact sheet shall be prepared on a
16 standard form for ease of transmission and communication.

17 (ii) The offender fact sheet shall ~~also~~ be on an
18 Internet-based application accessible to law enforcement, state boards, and
19 licensing agencies.

20 (iii) The offender fact sheet of a sexually ~~violent~~
21 ~~predator and~~ dangerous person or a sex offender found by the center to be in
22 violation of the registration requirement shall be made available to the
23 general public unless the release of the offender fact sheet, in the opinion
24 of the committee based on a risk assessment, places an innocent individual at
25 risk.

26 (B) The standard form shall include, but not be limited
27 to:

28 (i) Registration information as required in § 12-12-
29 908;

30 (ii) Risk level;

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

32 (iv) Psychological factors likely to affect sexual
33 control;

34 (v) Victim age and gender preference;

35 (vi) Treatment history and recommendations; and

36 (vii) Other relevant information deemed necessary by

1 the committee or by professional staff performing sex offender assessments.

2 (5)(A) The committee shall ensure that the notice is complete in
3 its entirety.

4 (B) A law enforcement officer shall notify the center if a
5 sex offender has moved or is otherwise in violation of a registration
6 requirement.

7 (6)(A) All material used in the assessment shall be kept on file
8 in its original form for one (1) year.

9 (B) After one (1) year the file may be stored
10 electronically.

11 (g)(1) In cooperation with the committee, the Department of Correction
12 shall promulgate rules and regulations to establish the review process for
13 assessment determinations.

14 (2)(A) The sex offender or sexually ~~violent predator~~ dangerous
15 person may request an administrative review of the assigned risk level under
16 the conditions stated and following the procedures indicated under § 12-12-
17 922.

18 (B) The sex offender shall be notified of these rights and
19 procedures in the documentation sent with the notification of risk level.

20 (h)(1)(A) A sex offender or sexually ~~violent predator~~ dangerous person
21 may request the committee to reassess the ~~sex offender's~~ assigned risk level
22 of the sex offender or sexually dangerous person after five (5) years have
23 elapsed since initial risk assessment by the committee and may renew that
24 request one (1) time every five (5) years.

25 (B) In the request for reassessment, the sex offender or
26 sexually dangerous person shall list the facts and circumstances that
27 demonstrate that the sex offender no longer poses the same degree of risk to
28 the community.

29 (2)(A) A local law enforcement agency having jurisdiction, the
30 Department of Community Correction, or the Parole Board may request the
31 committee to reassess a sex offender's assigned risk level at any time.

32 (B) In the request for reassessment, the local law
33 enforcement agency having jurisdiction, the Department of Community
34 Correction, or the Parole Board shall list the facts and circumstances that
35 prompted the requested reassessment.

36 (3) The committee shall also take into consideration any

1 subsequent criminal act by the sex offender or sexually ~~violent predator~~
2 dangerous person during a reassessment.

3
4 SECTION 16. Arkansas Code § 12-12-918 is amended to read as follows:
5 12-12-918. Classification as sexually violent predator.

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

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

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

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

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

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

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

26 (B) The committee may elect to send an examiner to the
27 local or regional detention facility.

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

30 (c)(1) Should evidence be found in the course of any assessment
31 conducted by the committee that a defendant appears to meet the criteria for
32 being classified as a sexually ~~violent predator~~ dangerous person, the
33 committee shall bring this information to the attention of the prosecutor,
34 who will determine whether to file a petition with the court for the
35 defendant to be classified as a sexually ~~violent predator~~ dangerous person.

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

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

4 (d)(1) The judgment and commitment order should state whether the
5 offense qualifies as an aggravated sex offense.

6 (2) Should the aggravated sex offense box not be checked on the
7 commitment order, the court will be contacted by the committee and asked to
8 furnish a written determination as to whether the offense qualifies as an
9 aggravated sex offense.

10
11 SECTION 17. Arkansas Code § 12-12-919(a)(2), concerning the
12 termination of the obligation to register as a sex offender, is amended to
13 read as follows:

14 (2) Determined by the court to be a sexually ~~violent predator~~
15 dangerous person; or

16
17 SECTION 18. The catchline of Arkansas Code § 12-12-922 is amended to
18 read as follows:

19 12-12-922. Alternative procedure for sexually ~~violent predator~~
20 dangerous person evaluations – Administrative review of assigned risk level.

21
22 SECTION 19. Arkansas Code § 12-12-922(a)(1), concerning alternative
23 procedures for certain sex offender evaluations, is amended to read as
24 follows:

25 (a)(1) The alternative procedure under this section may be used for
26 sexually ~~violent predator~~ dangerous person evaluations if information that
27 was not available to the court at the time of trial emerges in the course of
28 a sex offender evaluation.

29
30 SECTION 20. Arkansas Code § 12-12-923(a)(1), concerning the electronic
31 monitoring of sex offenders, is amended to read as follows:

32 (a)(1) Upon release from incarceration, a sex offender determined to
33 be a sexually ~~violent predator~~ dangerous person whose crime was committed
34 after April 7, 2006, is subject to electronic monitoring for a period of not
35 less than ten (10) years from the date of the sex offender's release.

36

1 SECTION 21. Arkansas Code § 12-12-923(e)(1), concerning the electronic
2 monitoring of sex offenders, is amended to read as follows:

3 (e)(1) A person who knowingly alters, tampers with, damages, or
4 destroys any electronic monitoring equipment worn by a sexually ~~violent~~
5 ~~predator pursuant to~~ dangerous person under this section upon conviction is
6 guilty of a Class C felony.

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