

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

As Engrossed: S3/4/13
A Bill

HOUSE BILL 1409

By: Representative Neal
By: Senator J. Woods

For An Act To Be Entitled

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

Subtitle

CONCERNING THE EVALUATION PROTOCOL FOR
ASSESSING PERSONS WHO POTENTIALLY WILL BE
CLASSIFIED AS A SEXUALLY DANGEROUS
PERSON; TO MAKE TECHNICAL CHANGES IN THE
CHANGE IN TERMINOLOGY THROUGHOUT THE
CODE.

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

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

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

(B) Unless otherwise specified, "sex offender" includes those individuals classified by the court as a "sexually violent predators dangerous person"; ~~a "sexually violent predators dangerous person"~~



SECTION 2. Arkansas Code § 12-12-903(15), concerning the definition of "sexually violent predator" under the Sex Offender Registration Act of 1997, is amended to read as follows:

(15)(A) "~~Sexually violent predator~~ dangerous person" means a person who has been adjudicated guilty 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.

(B) A person previously classified as a sexually violent predator is now considered a sexually dangerous person.

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

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

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

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

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

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

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

(d) When registering or updating the registration file of a sexually ~~violent predator~~ dangerous person, in addition to the requirements of subdivision (c)(1) or (2) of this section, the sentencing court, the Department of Correction, the Department of Community Correction, the Arkansas State Hospital, the Department of Human Services, or the local law enforcement agency having jurisdiction shall obtain documentation of any

treatment received for the mental abnormality or personality disorder of the sexually ~~violent predator~~ dangerous person.

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

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

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

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

- (A) Name;
- (B) Social security number;
- (C) Age;
- (D) Race;
- (E) Gender;
- (F) Date of birth;
- (G) Height;
- (H) Weight;
- (I) Hair and eye color;

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

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

(K) Date and place of any employment;

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

(M)(i) Fingerprints.

(ii) If the local law enforcement agency having

jurisdiction cannot confirm that the sexually ~~violent predator~~ dangerous person's fingerprints are contained in the automated fingerprint identification system, the local law enforcement agency having jurisdiction shall:

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

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

(N)(i) Photograph.

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

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

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

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

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

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

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

(C) His or her enrollment or employment status.

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

(A) Vehicle identification number;

(B) License tag number;

(C) Registration number; and

(D) A description, including color scheme.

(6) If the place of residence of the sexually ~~violent predator~~ dangerous person is a vessel, live-aboard vessel, or houseboat, the sexually ~~violent predator~~ dangerous person shall report the following information concerning the vessel, live-aboard vessel, or houseboat:

(A) Hull identification number;

(B) Manufacturer's serial number;

(C) Name;

(D) Registration number; and

(E) A description, including color scheme.

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

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

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

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

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

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

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

SECTION 11. Arkansas Code § 12-12-913(i), concerning disclosure of

information concerning sex offenders, is amended to read as follows:

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

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

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

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

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

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

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

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

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

(a)(1) The Sex Offender 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 sex offense should be considered a sexually ~~violent predator~~ dangerous person for purposes of this subchapter.

(2) The committee shall also establish qualifications for

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

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

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

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

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

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

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

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

- (A) Arrest reports;
- (B) Incident reports;
- (C) Offender statements;
- (D) Judgment and disposition

forms;

- (E) Medical records;
- (F) Witness statements; and
- (G) Any record considered relevant

by the prosecuting attorney.

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

release.

(3) A sex offender currently in the state who has not been assessed and classified shall be identified by the center.

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

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

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

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

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

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

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

(A) Police reports;

(B) Statements of probable cause;

(C) Presentence investigations and reports;

(D) Complete judgments and sentences;

(E) Current classification referrals;

(F) Criminal history summaries;

(G) Violation and disciplinary reports;

(H) All psychological evaluations and psychiatric hospital reports;

(I) Sex offender or sexually ~~violent predator~~ dangerous person treatment program reports;

(J) Juvenile court records;

(K) Victim impact statements;

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

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

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

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

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

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

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

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

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

(1) Prior to the sex offender's release for confinement in a

correctional facility;

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

(3) At the start of a sex offender's suspended imposition of sentence; or

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

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

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

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

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

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

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

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

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

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

(ii) Risk level;

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

(iv) Psychological factors likely to affect sexual control;

(v) Victim age and gender preference;

(vi) Treatment history and recommendations; and
(vii) Other relevant information deemed necessary by the committee or by professional staff performing sex offender assessments.

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

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

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

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

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

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

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

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

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

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

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

prompted the requested reassessment.

(3) The committee shall also take into consideration any subsequent criminal act by the sex offender or sexually ~~violent predator~~ dangerous person during a reassessment.

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

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

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

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

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

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

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

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

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

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

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

defendant to be classified as a sexually ~~violent predator~~ dangerous person.

(2) The sentencing court shall retain jurisdiction to determine whether a defendant is a sexually ~~violent predator~~ dangerous person for one (1) year after sentencing or for so long as the defendant remains incarcerated for the sex offense.

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

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

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

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

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

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

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

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

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

(a)(1) Upon release from incarceration, a sex offender determined to be a sexually ~~violent predator~~ dangerous person whose crime was committed after April 7, 2006, is subject to electronic monitoring for a period of not

less than ten (10) years from the date of the sex offender's release.

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

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

/s/Neal