

Stricken language would be deleted from present law. Underlined language would be added to present law.

1 State of Arkansas
2 81st General Assembly
3 Regular Session, 1997
4

As Engrossed: H1/29/97

A Bill

ACT 989 OF 1997
HOUSE BILL 1061

5 By: Representatives Flanagin, Lynn, Broadway, Capps, Choate, Cunningham, Curran, Davis, Dietz, Faris, Ferguson, Ferrell, Goodwin,
6 Hogue, Johnson, Jones, Kidd, Madison, McGehee, McGinnis, Miller, Molinaro, Pollan, Rorie, Schexnayder, Simmons, Judy Smith,
7 Terry Smith, Stalnaker, Teague, Thicksten, Trammel, Wagner, Willems, Wilkinson, Wren, Wooldridge, *Bennett, Horn, Ingram, Laverty,*
8 *Roberts, and Wallis*
9

For An Act To Be Entitled

12 "AN ACT TO ESTABLISH A SYSTEM OF REGISTRATION FOR SEXUALLY
13 VIOLENT PREDATORS AND SEX AND CHILD OFFENDERS; TO PROVIDE
14 FOR COMMUNITY NOTIFICATION OF THE RELEASE OF SEXUALLY
15 VIOLENT PREDATORS AND SEX AND CHILD OFFENDERS; TO
16 ESTABLISH A STATE BOARD FOR THE EVALUATION OF SEXUALLY
17 VIOLENT PREDATORS; AND FOR OTHER PURPOSES."

Subtitle

19 "TO ESTABLISH A SYSTEM OF REGISTRATION
20 FOR SEX AND CHILD OFFENDERS AND TO
21 PROVIDE FOR COMMUNITY NOTIFICATION"
22

23
24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
25

26 SECTION 1. This act shall be known and may be cited as the "Sex and
27 Child Offender Registration Act of 1997."
28

29 SECTION 2. The General Assembly finds that sex offenders pose a high
30 risk of reoffending after release from custody, that protecting the public
31 from sex offenders is a primary governmental interest, that the privacy
32 interest of persons adjudicated guilty of sex offenses are less important than
33 the government's interest in public safety, and that the release of certain
34 information about sex offenders to criminal justice agencies and the general
35 public will assist in protecting the public safety.
36

1 SECTION 3. For the purposes of this act:

2 (1) "Administration of criminal justice" means performing functions of
3 investigation, apprehension, detention, prosecution, adjudication,
4 correctional supervision, or rehabilitation of accused persons or criminal
5 offenders. The administration of criminal justice also includes criminal
6 identification activities and the collection, maintenance, and dissemination
7 of criminal justice information;

8 (2) "Change of address" or other words of similar import means a change
9 of residence or a change for more than thirty (30) days of temporary domicile;

10 (3) "Criminal justice agency" means a government agency, or any subunit
11 thereof, which is authorized by law to perform the administration of criminal
12 justice, and which allocates more than one-half (1/2) its annual budget to the
13 administration of criminal justice;

14 (4) "Adjudication of guilt" or other words of similar import means a
15 plea of guilty, a plea of nolo contendere, a negotiated plea, a finding of
16 guilt by a judge, or a finding of guilt by a jury;

17 (5) "Local law enforcement agency having jurisdiction" means the chief
18 law enforcement officer of the municipality in which an offender resides or
19 expects to reside, or the county sheriff if the municipality does not have a
20 chief law enforcement officer or if an offender resides or expects to reside
21 in an unincorporated area of a county;

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

27 (7) "Offender" means a sexually violent predator or a sex or child
28 offender;

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

30 (A) Kidnapping pursuant to A.C.A. 5-11-102(a)(4) when the victim
31 is a minor and the offender is not the parent of the victim;

32 (B) False imprisonment in the first degree pursuant to A.C.A.
33 5-11-103 when the victim is a minor and the offender is not the parent of the
34 victim,

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

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

2 (E) An attempt, solicitation, or conspiracy to commit any of the
3 offenses enumerated in this subsection (7);

4 (F) An adjudication of guilt for an offense of the law of another
5 state, for a federal offense, or for a military offense, which is
6 substantially equivalent to any of the offenses enumerated in this subsection
7 (7); or

8 (G) A violation of any former law of this state which is
9 substantially equivalent to any of the offenses enumerated in this subsection
10 (7);

11 (9) "Personality disorder" means an enduring pattern of inner
12 experience and behavior that deviates markedly from the expectation of the
13 person's culture, is pervasive and inflexible across a broad range of
14 personal and social situations, leads to clinically significant distress or
15 impairment in social, occupational or other important areas of functioning, is
16 stable over time, has onset in adolescence or early adulthood, is not better
17 accounted for as a manifestation or consequence of another mental disorder,
18 and is not due to the direct physiological effects of a substance or a general
19 medical condition;

20 (10) "Predatory" means an act directed at a stranger or a person with
21 whom a relationship has been established or promoted for the primary purpose
22 of victimization;

23 (11) "Sentencing court" means the judge of the court that sentenced the
24 offender for the sexually violent offense, the sex offense, or the offense
25 against a victim who is a minor that triggered registration under this act;

26 (12) "Sex offense" means:

27 (A) Rape - 5-14-103;

28 (B) Carnal abuse in the first degree - 5-14-104;

29 (C) Carnal abuse in the second degree - 5-14-105;

30 (D) Carnal abuse in the third degree - 5-14-106;

31 (E) Sexual misconduct - 5-14-107;

32 (F) Sexual abuse in the first degree - 5-14-108;

33 (G) Sexual abuse in the second degree - 5-14-109;

34 (H) Sexual solicitation of a child - 5-14-110;

35 (I) Violation of minor in the first degree - 5-14-120;

36 (J) Violation of a minor in the second degree - 5-14-121;

1 (K) Incest - 5-26-202;

2 (L) Engaging children in sexually explicit conduct for use in
3 visual or print medium - 5-27-303;

4 (M) Transportation of minors for prohibited sexual conduct -
5 5-27-305;

6 (N) Employing or consenting to use of child in sexual performance
7 - 5-27-402;

8 (O) Producing, directing or promoting sexual performance -
9 5-27-403;

10 (P) Promoting prostitution in the first degree - 5-70-104;

11 (Q) Stalking - 5-71-229;

12 (R) An attempt, solicitation, or conspiracy to commit any of the
13 offenses enumerated in this subsection (11);

14 (S) An adjudication of guilt for an offense of the law of another
15 state, for a federal offense, or for military offense, which is substantially
16 equivalent to any of the offenses enumerated in this subsection (11); or

17 (T) A violation of any former law of this state which is
18 substantially equivalent to any of the offenses enumerated in this subsection
19 (11);

20 (13) "Sex or Child Offender" means a person who is adjudicated guilty
21 of or acquitted on the grounds of mental disease or defect of a sex offense or
22 an offense against a victim who is a minor;

23 (14) "Sexually violent offense" means any state, federal, or military
24 offense which includes a sexual act as defined in 18 U.S.C. 2246(2) with
25 another person if the offense is non-consensual or the person is under the age
26 of twelve;

27 (15) "Sexually violent predator" means a person who has been
28 adjudicated guilty or acquitted on the grounds of mental disease or defect of
29 a sexually violent offense and who suffers from a mental abnormality or
30 personality disorder that makes the person likely to engage in predatory
31 sexually violent offenses.

32
33 SECTION 4. The registration requirements of this act apply to:

34 (1) a person who is adjudicated guilty of a sexually violent offense, a
35 sex offense, or an offense against a victim who is a minor, on or after the
36 effective date of this act;

1 (2) a person who is serving a sentence of incarceration, probation,
2 parole, or other form of community supervision as a result of an adjudication
3 of guilt for a sexually violent offense, a sex offense, or an offense against
4 a victim who is a minor, on the effective date of this act;

5 (3) a person who is committed following an acquittal on the grounds of
6 mental disease or defect for a sexually violent offense, a sex offense, or an
7 offense against a victim who is a minor, on or after the effective date of
8 this act;

9 (4) a person who is serving a commitment as a result of an acquittal on
10 the grounds of mental disease or defect for a sexually violent offense, a sex
11 offense, or an offense against a victim who is a minor, on the effective date
12 of this act; and

13 (5) a person who is required to be registered under the ~~H~~Habitual Child
14 Sex Offender Registration Act~~s~~, A.C.A. 12-12-901, et seq.

15
16 SECTION 5. (a)(1) An offender who is adjudicated guilty after the
17 effective date of this act shall be registered by the clerk of the sentencing
18 court at the time of the offender's sentencing.

19 (2) Prior to release, the Department of Correction, or the
20 Department of Human Services, whichever is responsible for supervision, shall
21 register an offender who, on the effective date of this act, is confined in a
22 correctional facility or serving a commitment following acquittal on the
23 grounds of mental disease or defect.

24 (3) No later than thirty (30) days after the effective date of
25 this act, the Department of Correction or the Department of Community
26 Punishment, whichever is responsible for supervision, shall register an
27 offender who, on the effective date of this act, is under supervision in the
28 community on parole, furlough, work release, or a similar program.

29 (4) An offender moving to or returning to this state from another
30 jurisdiction shall register with the local law enforcement agency having
31 jurisdiction no later than thirty (30) days after the effective date of this
32 act or thirty (30) days after the offender establishes residency in a
33 municipality or county of this state, whichever is later.

34 (5) An offender required to register on the basis of an
35 adjudication of guilt prior to the effective date of this act who is not
36 confined or under supervision on the effective date of this act shall register

1 with the local law enforcement agency having jurisdiction no later than thirty
2 (30) days after the effective date of this act.

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

8 (2) Immediately prior to release or immediately following an
9 escape, the Department of Correction or the Department of Human Services shall
10 update the registration file of the offender who is to be released or who has
11 escaped.

12 (c)(1) When registering an offender as provided in subsection (a) the
13 Department of Correction, the Department of Community Punishment, the
14 Department of Human Services, the clerk of the sentencing court, or the local
15 law enforcement agency having jurisdiction shall:

16 (A) inform the offender of the duty to register and obtain
17 the information required for registration as described in section 7;

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

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

28 (D) obtain fingerprints and a photograph of the offender if
29 these have not already been obtained in connection with the offense that
30 triggered registration; and

31 (E) require the offender to read and sign a form stating
32 that the duty of the person to register under this act has been explained.

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

35 (A) review with the offender the duty to register and obtain
36 current information required for registration as described in section 7;

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

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

12 (D) require the offender to read and sign a form stating
13 that the duty of the person to register under this act has been reviewed.

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

21
22 SECTION 6. (a) Within three (3) days after registering or updating the
23 registration file of an offender, the Department of Correction, the Department
24 of Community Punishment, the Department of Human Services, the clerk of the
25 sentencing court, or the local law enforcement agency having jurisdiction
26 shall report, by written or electronic means, all information obtained from
27 the offender and regarding the offender to the Arkansas Crime Information
28 Center. The Arkansas Crime Information Center shall immediately enter the
29 information into their record system for maintenance in a central registry and
30 notify the local law enforcement agency having jurisdiction.

31 (b) No later than ten (10) days after release from incarceration or
32 after the date of sentencing, an offender shall report to the local law
33 enforcement agency having jurisdiction and update the information in the
34 registration file. If the offender is not already registered, the local law
35 enforcement agency having jurisdiction shall register the offender in
36 accordance with this act. Within three (3) days after registering an offender

1 or receiving updated registry information on an offender, the local law
2 enforcement agency having jurisdiction shall report, by written or electronic
3 means, all information obtained from the offender to the Arkansas Crime
4 Information Center.

5
6 SECTION 7. (a) Within sixty (60) days after the effective date of this
7 act, the Director of the Arkansas Crime Information Center shall prepare the
8 format for registration as required in subsection (b) of this section and
9 shall provide instructions for registration to each organized full-time
10 municipal police department, county sheriff's office, the Department of
11 Correction, the Department of Community Punishment, the Department of Human
12 Services, and the Administrative Office of the Courts.

13 (b) The registration file required by this act shall include:

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

16 (2) Age;

17 (3) Date of birth;

18 (4) Sex;

19 (5) Race;

20 (6) Height;

21 (7) Weight;

22 (8) Hair and eye color;

23 (9) Address of any temporary residence;

24 (10) Anticipated address of legal residence;

25 (11) Driver's license number or state identification number, if
26 available;

27 (12) Social security number;

28 (13) Place of employment;

29 (14) Photograph, if not already obtained;

30 (15) Fingerprints, if not already obtained;

31 (16) Date of arrest, arresting agency, offense for which
32 convicted or acquitted, and arrest tracking number for each adjudication of
33 guilt or acquittal on the grounds of mental disease or defect;

34 (17) A brief description of the crime or crimes for which
35 registration is required;

36 (18) The registration status of the offender as a sexually

1 violent predator or a sex or child offender;

2 (19) A statement in writing signed by the offender acknowledging
3 that the offender has been advised of the duty to register imposed by this
4 act; and

5 (20) Any other information that the Arkansas Crime Information
6 Center deems necessary, including, but not limited to, criminal and
7 corrections records, non-privileged personnel, treatment and abuse registry
8 records, and evidentiary genetic markers.

9
10 SECTION 8. (a)(1) For a person required to register as a sex or child
11 offender, every six (6) months after the person's initial registration date
12 during the period in which the person is required to register the following
13 applies:

14 (A) The Arkansas Crime Information Center shall mail a
15 nonforwardable verification form to the last reported address of the person.

16 (B) The person shall return the verification form in person
17 to the local law enforcement agency having jurisdiction within ten (10) days
18 after receipt of the form. Within three (3) days after receipt of the form,
19 the local law enforcement agency having jurisdiction shall forward the form
20 to the Arkansas Crime Information Center.

21 (C) The verification form shall be signed by the person,
22 and state that the person still resides at the address last reported to the
23 Arkansas Crime Information Center.

24 (D) If the person fails to return the verification form to
25 the local law enforcement agency having jurisdiction within ten (10) days
26 after receipt of the form, the person shall be in violation of this act,
27 unless the person proves that the person has not changed address.

28 (2) The provisions of subsection (a)(1) shall be applied to a
29 person required to register as a sexually violent predator, except that such
30 person must verify the registration every ninety (90) days after the date of
31 the initial release or commencement of parole.

32 (b)(1) Before a change of address within the State, an offender shall
33 report the change of address to the Arkansas Crime Information Center no later
34 than ten (10) days before the offender establishes residency or is temporarily
35 domiciled at the new address.

36 (2) When a change of address within the State is reported to the

1 Arkansas Crime Information Center, the Arkansas Crime Information Center shall
2 immediately report the change of address to the local law enforcement agency
3 having jurisdiction where the offender expects to reside.

4 (c)(1) Before a change of address to another state, an offender shall
5 register the new address with the Arkansas Crime Information Center and with a
6 designated law enforcement agency in the state to which the person moves not
7 later than ten (10) days before such person establishes residence or is
8 temporarily domiciled in the new state, if the new state has a registration
9 requirement.

10 (2) When a change of address to another state is reported to the
11 Arkansas Crime Information Center, the Arkansas Crime Information Center shall
12 immediately notify the law enforcement agency with which the offender must
13 register in the new state, if the new state has a registration requirement.

14 (d) The Arkansas Crime Information Center may require an offender to
15 report a change of address through the local law enforcement agency having
16 jurisdiction.

17
18 SECTION 9. Unless finding that undue hardship would result, the
19 sentencing court shall assess at the time of sentencing a mandatory fine of
20 two hundred and fifty dollars (\$250) on any person who is required to register
21 under this act.

22
23 SECTION 10. (a) There is hereby established on the books of the
24 Treasurer of State, Auditor or State, and Chief Fiscal Officer of the State a
25 fund to be know as the Sex and Child Offenders Registration Fund.

26 (b) This fund shall consist of special revenues collected pursuant to
27 section 7 there to be used by the Arkansas Crime Information Center for the
28 administration of this act.

29
30 SECTION 11. (a) A person who fails to register or who fails to report
31 changes of address as required under this act shall be guilty of a Class D
32 felony.

33 (b) Any agency or official subject to reporting requirements under this
34 act that knowingly fails to comply with such reporting requirement shall be
35 guilty of a Class B misdemeanor.

1 SECTION 12. (a) In order for an offender to be charged with the
2 commission of a violation of this act so that an arrest warrant shall be
3 issued, it shall be the duty of the local law enforcement agency having
4 jurisdiction to notify the prosecutor when the local law enforcement agency
5 having jurisdiction has reasonable grounds for believing that an offender is
6 not registered or has not reported a change of address in violation of this
7 act.

8 (b) The address of an offender as listed in the offender's
9 registration file shall determine which local law enforcement agency has
10 jurisdiction.

11 (c) A law enforcement officer shall arrest an offender when a warrant
12 has been issued for the offender's arrest or he has reasonable grounds for
13 believing that an offender is not registered or has not reported a change of
14 address in violation of this act.

15
16 SECTION 13. (a) Registration records maintained pursuant to this act
17 shall be open to any criminal justice agency in this state, the United States,
18 or any other state. Registration records may also be open to government
19 agencies authorized by law to conduct confidential background checks.

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

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

33 (2) The guidelines and procedures shall identify factors relevant
34 to an offenders future dangerousness and likelihood of reoffense or threat to
35 the community. The guidelines and procedures shall also address the extent of
36 the information to be disclosed and the scope of the community to whom

1 disclosure shall be made as these factors relate to the level of the
2 offenders dangerousness, the offenders pattern of offending behavior, and to
3 the need of community members for information to enhance their individual and
4 collective safety.

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

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

14 (2) If a change occurs in an offender release plan, this
15 notification provision shall not require an extension of the release date.

16 (3) The Department of Correction and the Department of Human
17 Services shall, in conjunction with the notice provided under section 14 of
18 this act, make available to a local law enforcement agency having jurisdiction
19 all information that the departments have concerning the offender, including
20 information on risk factors in the offenders history.

21 (e) Local law enforcement agencies having jurisdiction that decide to
22 disclose information under this section shall make a good faith effort to
23 conceal the identity of the victim or victims of the offenders offense.

24 (f) Local enforcement agencies having jurisdiction may continue to
25 disclose information on an offender under this section for as long as the
26 offender is required to be registered under this act.

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

34 (h) Nothing in this section shall be construed to prevent law
35 enforcement officers from notifying members of the public exposed to danger of
36 any persons that pose a danger under circumstances that are not enumerated in

1 this act."

2
3
4 SECTION 14. (a)(1) The Department of Correction shall provide notice,
5 by written or electronic means, to the Arkansas Crime Information Center of
6 the anticipated release from incarceration in a county or State penal
7 institution of a person serving a sentence for a sexually violent offense, a
8 sex offense, or an offense against a victim who is a minor.

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

14 (b) If available, the notice required in subsection (a) shall be
15 provided to the Arkansas Crime Information Center ninety (90) days before the
16 offender's anticipated release; provided, however, a good faith effort shall
17 be made to provide the notice at least thirty (30) days before release. The
18 notice shall include the person's name, identifying factors, offense history,
19 and anticipated future residence.

20 (c) Upon receipt of notice, the Arkansas Crime Information Center shall
21 provide notice to:

22 (1) the local law enforcement agency having jurisdiction; and

23 (2) such other State and local law enforcement agencies as
24 appropriate for public safety.

25 (d) The Department of Correction shall notify the victim of the
26 anticipated release of the offender if the victim of the sexually violent
27 offense, the sex offense or the offense against a victim who is a minor has
28 filed a request for such notice with the prosecuting attorney in the county
29 where the offender was adjudicated guilty.

30
31 SECTION 15. (a) The Arkansas Crime Information Center shall promulgate
32 regulations necessary to administer this act.

33 (b) The Department of Correction, the Department of Community
34 Punishment, the Department of Human Services, and the Administrative Office of
35 the Courts shall promulgate regulations to establish procedures for notifying
36 offenders of the obligation to register pursuant to this act and procedures

1 for registration of those offenders.

2
3 SECTION 16. (a) The Arkansas Crime Information Center shall cause
4 notice of the obligation to register to be published in a manner reasonably
5 calculated to reach the general public within thirty (30) days after the
6 effective date of this act.

7 (b) The Office of Driver Services of the Department of Finance and
8 Administration shall provide notice of the obligation to register pursuant to
9 this act in connection with each driver's license issued pursuant to A.C.A.
10 27-16-801 and each identification card issued pursuant to A.C.A. 27-16-805.

11
12 SECTION 17. The Child Abuse/Rape/Domestic Violence Commission shall
13 develop an evaluation protocol for preparing reports to assist courts in
14 making determinations whether or not a person adjudicated guilty of a sexually
15 violent offense should be considered a sexually violent predator for purposes
16 of this act. The Commission shall also establish qualifications for and
17 qualify examiners to prepare reports in accordance with the evaluation
18 protocol.

19
20 SECTION 18. (a) In order to classify a person as a sexually violent
21 predator, a prosecutor shall allege on the face of an information that he is
22 seeking a determination that the defendant is a sexually violent predator. If
23 the defendant is adjudicated guilty, the court shall enter an order directing
24 an examiner qualified by the Child Abuse/Rape/Domestic Violence Commission to
25 issue a report to the sentencing court that recommends whether or not the
26 defendant should be classified as a sexually violent predator. Copies of the
27 report shall be forwarded immediately to the prosecutor and defense attorney.
28 The report shall not be admissible for purposes of sentencing. After
29 sentencing, the court shall make a determination regarding the defendant's
30 status as a sexually violent predator.

31 (b) In order for the examiner qualified by the Child
32 Abuse/Rape/Domestic Violence Commission to prepare the report, the defendant
33 shall be sent for evaluation to a facility designated by the Child
34 Abuse/Rape/Domestic Violence Commission. The cost of the evaluation,
35 including the room and board of the defendant, shall be borne by the state;
36 however, when the evaluation of the defendant has been completed, the county

1 in which the defendant is being prosecuted, shall procure the defendant from
2 the designated facility within three (3) working days. If the county fails to
3 procure the defendant with the three (3) day period, the county shall bear all
4 room and board costs on the fourth and subsequent days.

5
6 SECTION 19. (a)(1) A sex or child offender required to register under
7 this act may make application to the Circuit Court in the county in which the
8 sex or child offender resides for an order terminating the child or sex
9 offender's obligation to register. The court shall hold a hearing on the
10 application at which the applicant and any interested persons may present
11 witnesses and other evidence. Not less than twenty (20) days prior to the
12 date of the hearing on the application, a copy of the application for
13 termination of the obligation to register shall be served on the prosecutor of
14 the county in which the adjudication of guilt triggering registration was
15 obtained.

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

18 (A) the applicant has not committed an offense within
19 fifteen (15) years after the person was released from prison or other
20 institution, placed on parole, supervised release, or probation; and

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

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

36 (2) The court shall grant an order terminating the obligation to

1 register upon proof by a preponderance of the evidence that:

2 (A) the applicant has not committed an offense within
3 twenty (20) years after the person was released from prison or other
4 institution, placed on parole, supervised release, or probation; and

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

8
9 SECTION 20. (a) Public officials, public employees, and public
10 agencies are immune from civil liability for good faith conduct under this
11 act.

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

17
18 SECTION 21. All provisions of this act of a general and permanent
19 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
20 Code Revision Commission shall incorporate the same in the Code.

21
22 SECTION 22. If any provision of this act or the application thereof to
23 any person or circumstance is held invalid, such invalidity shall not affect
24 other provisions or applications of the act which can be given effect without
25 the invalid provision or application, and to this end the provisions of this
26 act are declared to be severable.

27
28 SECTION 23. The "Habitual Child Sex Offender Registration Act", A.C.A.
29 12-12-901, et seq. is repealed on the effective date of this act.

30 ~~§ 12-12-901. Title.~~

31 ~~This subchapter shall be known and may be cited as the "Habitual Child~~
32 ~~Sex Offender Registration Act".~~

33 ~~§ 12-12-902. Definitions.~~

34 ~~As used in this subchapter, unless the context otherwise requires:~~

35 ~~(1) "Habitual child sex offender" includes any person who, after August~~
36 ~~1, 1987, is convicted a second or subsequent time in separate criminal actions~~

1 ~~for commission of any of the sex offenses set forth in subdivision (2)(A) of~~
2 ~~this section. Upon such conviction, the court shall certify that the person is~~
3 ~~a habitual child sex offender and shall include this certification in the~~
4 ~~order of commitment. Convictions which result from or are connected with the~~
5 ~~same act, or result from offenses committed at the same time, shall be counted~~
6 ~~for the purpose of this section as one (1) conviction. Any conviction set~~
7 ~~aside pursuant to law is not a conviction for purposes of this section. A~~
8 ~~conviction from another state shall constitute a conviction for purposes of~~
9 ~~this subchapter;~~

10 ~~_____ (2) "Sex offense" means:~~

11 ~~_____ (A) A violation of any of the following sections of the Arkansas~~
12 ~~Criminal Code, when the victim is under eighteen (18) years of age:~~

13 ~~_____ (i) Rape - § 5-14-103;~~

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

15 ~~_____ (iii) Carnal abuse in the second degree - § 5-14-105;~~

16 ~~_____ (iv) Sexual abuse in the first degree - § 5-14-108;~~

17 ~~_____ (v) Violation of a minor in the first degree - § 5-14-120;~~

18 ~~_____ (vi) Violation of a minor in the second degree - § 5-14-121;~~

19 ~~_____ (vii) Incest - § 5-26-202;~~

20 ~~_____ (B) A violation of any former law of this state which is substantially~~
21 ~~equivalent to any offense listed in subdivision (2)(A) of this section;~~

22 ~~_____ (C) A conviction for an offense of the law of another state which is~~
23 ~~substantially equivalent to any offense listed in subdivision (2)(A) of this~~
24 ~~section; and~~

25 ~~_____ (3) "Law enforcement agency having jurisdiction" means the chief of~~
26 ~~police in the municipality in which the offender expects to reside upon his~~
27 ~~discharge, parole, or release or the sheriff of the county, in the event no~~
28 ~~police chief exists or if the offender intends to reside in an unincorporated~~
29 ~~area.~~

30 ~~_____ § 12-12-903. Penalty.~~

31 ~~_____ Any person who is required to register under this subchapter who~~
32 ~~violates any of its provisions is guilty of a Class A misdemeanor.~~

33 ~~_____ § 12-12-904. Registration required - Change of address.~~

34 ~~_____ (a) Within thirty (30) days of his coming into any county in which he~~
35 ~~resides or is temporarily domiciled for more than thirty (30) days, any~~
36 ~~habitual child sex offender shall register with the chief of police of the~~

1 ~~municipality in which he resides. In the event no police chief exists or if~~
2 ~~the habitual sex offender resides in an unincorporated area, he shall register~~
3 ~~with the sheriff of the county.~~

4 ~~— (b)(1) If any person required to register under this subchapter changes~~
5 ~~his residence address, he shall inform the law enforcement agency with whom he~~
6 ~~last registered of his new address, in writing, within ten (10) days.~~

7 ~~— (2) The law enforcement agency shall, within three (3) days of receipt of~~
8 ~~the new address, forward this information to the Department of Arkansas State~~
9 ~~Police and to the law enforcement agency having jurisdiction of the new place~~
10 ~~of residence.~~

11 ~~— [§] 12-12-905. Explanation of duty to register - Reports.~~

12 ~~— (a)(1) Any habitual child sex offender, as defined in [§] 12-12-902(1),~~
13 ~~who is discharged or paroled from a prison, hospital, or other institution or~~
14 ~~facility where he was confined pursuant to [§] 12-12-902(2), prior to discharge,~~
15 ~~parole, or release, shall be informed by the staff of the facility in which he~~
16 ~~was confined of his duty to register under this subchapter.~~

17 ~~— (2)(A) The staff of the facility shall explain the duty to register and~~
18 ~~the procedure for registration and require the person to sign a form which~~
19 ~~shall be prepared by the Department of Arkansas State Police stating that the~~
20 ~~duty and procedure have been explained to the person.~~

21 ~~— (B) The staff of the facility shall obtain the address where the person~~
22 ~~expects to reside upon his discharge, parole, or release and shall report the~~
23 ~~address to the Department of Arkansas State Police.~~

24 ~~— (C) The staff of the facility shall give one (1) copy of the form to~~
25 ~~the person and shall send two (2) copies to the Department of Arkansas State~~
26 ~~Police, which shall then forward one (1) copy to the law enforcement agency~~
27 ~~having jurisdiction where the person expects to reside upon his discharge,~~
28 ~~parole, or release.~~

29 ~~— (b)(1) Any habitual child sex offender who is released on probation,~~
30 ~~receives a suspended sentence, a suspended imposition of sentence, or is~~
31 ~~discharged upon payment of a fine because of the commission or the attempt to~~
32 ~~commit one of the offenses defined in [§] 12-12-902(2) prior to his release,~~
33 ~~shall be informed of his duty to register under this subchapter by the court~~
34 ~~in which he was convicted.~~

35 ~~— (2)(A) The court shall require the person to read and sign a form~~
36 ~~prepared by the Department of Arkansas State Police stating that the duty to~~

1 ~~register and the procedure for registration has been explained to him.~~

2 ~~—— (B) The court shall obtain the address where the person expects to~~
3 ~~reside upon his release and shall report the address to the Department of~~
4 ~~Arkansas State Police.~~

5 ~~—— (C) The court shall give one (1) copy of the form to the person and~~
6 ~~shall send two (2) copies to the Department of Arkansas State Police which~~
7 ~~shall then forward one (1) copy to the law enforcement agency having~~
8 ~~jurisdiction where the person expects to reside upon his release.~~

9 ~~—— § 12-12-906. Duration of registration requirement.~~

10 ~~—— (a) Any person required to register under this subchapter shall be~~
11 ~~required to register for a period of ten (10) years after conviction if not~~
12 ~~confined to a penal institution, psychiatric residential care facility or~~
13 ~~mental hospital, or any other institution or facility to which the person is~~
14 ~~confined for treatment related to registrable offenses at the expiration of~~
15 ~~ten (10) years after paroled, discharged, or released from any such facility.~~

16 ~~—— (b) Liability for registration terminates at the expiration of ten (10)~~
17 ~~years from the date of conviction if not confined to a penal institution,~~
18 ~~psychiatric residential care facility or mental hospital, or any other~~
19 ~~institution or facility to which the person is confined for treatment related~~
20 ~~to registrable offenses, at the expiration of ten (10) years from the date of~~
21 ~~parole, discharge, or release from any such facility, if the convicted~~
22 ~~habitual child sex offender does not again become liable to register under the~~
23 ~~provisions of this subchapter during that period.~~

24 ~~—— § 12-12-907. Manner of registering.~~

25 ~~—— (a) Registration as required by this subchapter shall consist of a~~
26 ~~statement in writing signed by the person. The information shall include the~~
27 ~~following:~~

28 ~~—— (1) Name;~~

29 ~~—— (2) Date of birth;~~

30 ~~—— (3) Offense or offenses committed, date of conviction or convictions~~
31 ~~obtained;~~

32 ~~—— (4) City or county of conviction or convictions obtained;~~

33 ~~—— (5) A photograph;~~

34 ~~—— (6) Fingerprints; and~~

35 ~~—— (7) Social security number.~~

36 ~~—— (b) Within three (3) days, the registering law enforcement agency shall~~

1 ~~forward the statement and any other required information to the Department of~~
2 ~~Arkansas State Police.~~

3 ~~_____ § 12-12-908. Relief from duty to register.~~

4 ~~_____ Any habitual child sex offender registered under the provisions of~~
5 ~~§ 12-12-904 may apply to the circuit court in this state having jurisdiction~~
6 ~~over the county in which the offender resides for an order relieving him of~~
7 ~~the duty of further registration. The court shall hold a hearing on the~~
8 ~~application at which the applicant and any interested persons may present~~
9 ~~witnesses and other evidence. If, after the hearing, the court finds by a~~
10 ~~preponderance of the evidence that the habitual child sex offender is~~
11 ~~rehabilitated, the court shall grant an order relieving him of the duty of~~
12 ~~further registration under this subchapter.~~

13 ~~_____ § 12-12-909. Access to information.~~

14 ~~_____ The statements or any other information required by this subchapter~~
15 ~~shall not be open to inspection by the public and specifically are not subject~~
16 ~~to the provisions of the Arkansas Freedom of Information Act, § 25-19-101 et~~
17 ~~seq., nor may this data be obtained by any person other than a law enforcement~~
18 ~~officer or other individual as may be authorized specifically by law.~~

19
20 SECTION 24. All laws and parts of laws in conflict with this act are
21 hereby repealed.

22 */s/Rep. Flanagan et al*

23
24 APPROVED: 4-01-97

