

ENGROSSED HOUSE  
BILL NO. 3144

By: Paulk, Benson, Boyd  
(Laura), Cox, Worthen,  
Sullivan (Leonard),  
Lindley and Perry of the  
House

and

Helton of the Senate

( sex offenders - amending 57 O.S., Sections 582, 584 and  
587 - application and compliance requirements of act -  
codification - effective date )

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 57 O.S. 1991, Section 582, as last  
amended by Section 3, Chapter 260, O.S.L. 1997 (57 O.S. Supp. 1997,  
Section 582), is amended to read as follows:

Section 582. The provisions of the Sex Offenders Registration  
Act, ~~Sections~~ Section 581 et seq. of this title, shall apply to any  
person who, after November 1, 1989, has been convicted, whether upon  
a verdict or plea of guilty or upon a plea of nolo contendere, or  
received a suspended sentence for a crime or an attempt to commit a  
crime provided for in Section 7115 of Title 10 of the Oklahoma  
Statutes if the offense involved sexual abuse or sexual exploitation  
as those terms are defined in Section 7102 of Title 10 of the  
Oklahoma Statutes, Sections 741, 843.1, if the offense included  
sexual abuse or sexual exploitation, 865 et seq., 885, 888, 891,  
1021, ~~except for a crime provided for in paragraph 1 of subsection A~~  
~~of Section 1021~~, 1021.2, 1021.3, 1040.13a, 1040.51, 1087, 1088,  
1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes or who

enters this state after November 1, 1989, and who has been convicted or received a suspended sentence for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in any of said laws. The provisions of the Sex Offenders Registration Act shall apply to any person who enters this state on or after September 1, 1993, and who has received a deferred judgment for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as those terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Section 741, 843.1, if the offense involved sexual abuse or sexual exploitation, 865 et seq., 885, 888, 891, 1021, ~~except for a crime provided for in paragraph 1 of subsection A of Section 1021,~~ 1021.2, 1021.3, 1040.13a, 1040.51, 1087, 1088, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes. The provisions of the Sex Offenders Registration Act shall not apply to any such person while the person is incarcerated in a maximum or medium correctional institution of the Department of Corrections.

SECTION 2. AMENDATORY 57 O.S. 1991, Section 584, as last amended by Section 5, Chapter 260, O.S.L. 1997 (57 O.S. Supp. 1997, Section 584), is amended to read as follows:

Section 584. A. The registration with the Department of Corrections required by the Sex Offenders Registration Act, Section 581 et seq. of this title, shall be in a form approved by the Department of Corrections and shall include the following information about the person registering:

1. The person's name and all aliases used or under which the person has been known;
2. A complete description of the person, including a photograph and fingerprints, and when requested by the Department of

Corrections, such registrant shall submit to a blood test for purposes of a deoxyribonucleic acid (DNA) profile. Submission to testing for individuals registering shall be within thirty (30) days of registration. All individuals registered pursuant to the Sex Offenders Registration Act on July 1, 1997, shall provide a blood sample by October 1, 1997. Registrants who already have valid samples on file in the Oklahoma State Bureau of Investigation (OSBI) DNA Offender Database shall not be required to submit duplicate samples for testing;

3. The offenses listed in Section 582 of this title of which the person has been convicted or for which the person received a suspended sentence, where the offense was committed, where the person was convicted or received the suspended sentence, and the name under which the person was convicted or received the suspended sentence;

4. The name and location of each hospital or penal institution to which the person was committed for each offense listed in Section 582 of this title; and

5. Where the person resides, how long the person has resided there, how long the person expects to reside there, and how long the person expects to remain in the county and in the State of Oklahoma. The Department of Corrections shall conduct address verification of the sex offender on an annual basis by mailing a nonforwardable verification form to the last reported address of the person. The person shall return the verification form in person to the local law enforcement agency of that jurisdiction within ten (10) days after receipt of the form and may be photographed by the local law enforcement agency at that time. The local law enforcement agency shall forward the form to the Oklahoma Department of Corrections within three (3) days after receipt of the form. The verification form shall be signed by the person and state the current address of the person. Failure to return the verification form shall be a

violation of this act. If the offender has been determined to be a predatory sex offender by the Department of Corrections, the address verification shall be conducted every ninety (90) days.

B. Conviction data and fingerprints shall be transmitted at the time of registration to the Oklahoma State Bureau of Investigation (OSBI) and the Federal Bureau of Investigation (FBI) if the state has not previously sent the information at the time of conviction.

C. The registration with the local law enforcement authority required by this act shall be in a form approved by the local law enforcement authority and shall include the following information about the person registering:

1. The person's full name, alias, date of birth, sex, race, height, weight, eye color, social security number, driver license number, and home address; and

2. A description of the offense for which the offender was convicted, the date of the conviction, and the sentence imposed, if applicable.

For purposes of this section, "local law enforcement authority" means the municipal police department, if the person resides or intends to reside or stay within the jurisdiction of any municipality of this state; or, the county sheriff, if the person resides or intends to reside or stay at any place outside the jurisdiction of any municipality within this state.

D. Any person subject to the provisions of the Sex Offenders Registration Act who changes an address shall give written notification of the new address to the Department of Corrections within ten (10) business days after the change of address and the local law enforcement authority within three (3) business days after the change of address.

E. The Department of Corrections shall maintain a file of all sex offender registrations. A copy of the information contained in the registration shall be available to state, county and municipal

law enforcement agencies. Said file shall be made available for public inspection or copying pursuant to rules promulgated by the Department of Corrections and may be made available through internet access. The Department of Corrections shall provide all municipal police departments and all county sheriff departments a list of those sex offenders registered and living in their county.

F. Each local law enforcement agency shall make its sex offender registry available ~~as follows:~~

~~1. To all public and private elementary schools within the jurisdiction;~~

~~2. To all child care facilities licensed by the state within the jurisdiction;~~

~~3. To any parent using a child care provider;~~

~~4. To any state agency that licenses individuals to work with children;~~

~~5. To the State Office of Personnel Management to screen persons who may work with children; and~~

~~6. To other entities that provide services to children and request the registry, including churches upon request.~~

When a law enforcement agency sends a copy of or otherwise makes the sex offender registry available to ~~any entity listed in paragraph 1 or 2 of this subsection~~ any public or private elementary school or child care facility licensed by the state, the agency shall provide a notice using the following or similar language: "A person whose name appears on this registry has been convicted of a sex offense. Continuing to employ a person whose name appears on this registry may result in civil liability for the employer."

G. Samples of blood for DNA testing required by subsection A of this section shall be taken by employees or contractors of the Department of Corrections. Said individuals shall be properly trained to collect blood samples. Persons collecting blood for DNA testing pursuant to this section shall be immune from civil

liabilities arising from this activity. The Department of Corrections shall ensure the collection of samples are mailed to the Oklahoma State Bureau of Investigation (OSBI) within ten (10) days of the time the subject appears for testing. The Department shall use sample kits provided by the OSBI and procedures promulgated by the OSBI. Persons subject to DNA testing pursuant to this section shall be required to pay to the Department of Corrections a fee of Fifteen Dollars (\$15.00). Any fees collected pursuant to this subsection shall be deposited in the Department of Corrections revolving account.

H. 1. Any person who ~~prior to November 1, 1997, was~~ is subject to registration pursuant to this act and:

- a. who subsequent to November 1, 1997 was convicted of a crime or an attempt to commit a crime provided for in Section 7115 of Title 10 of the Oklahoma Statutes if the offense involved sexual abuse or sexual exploitation as these terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Sections 885, 888, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes, or
- b. who enters this state after November 1, 1997, and who has been convicted of a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime provided for in subparagraph a of this paragraph,

shall, in addition to being subject to all of the registration requirements of this act, be designated by the Department of Corrections as a predatory sex offender. Designation as a predatory sex offender shall be for a period of not less than ten (10) years.

2. Upon registration of any person designated as a predatory sex offender, a local law enforcement authority shall notify, by any method of communication it deems appropriate, anyone that the local

law enforcement authority determines appropriate, including, but not limited to:

- a. the family of the predatory sex offender,
- b. any prior victim of the predatory sex offender, and
- c. residential neighbors and churches, community parks, schools, convenience stores, businesses and other places that children or other potential victims may frequent.

3. The notification may include, but is not limited to, the following information:

- a. the name and physical address of the predatory sex offender,
- b. a physical description of the predatory sex offender, including, but not limited to, age, height, weight and eye and hair color,
- c. a description of the vehicle that the predatory sex offender is known to drive,
- d. any conditions or restrictions upon the probation, parole or conditional release of the predatory sex offender,
- e. a description of the primary and secondary targets of the predatory sex offender,
- f. a description of the method of offense of the predatory sex offender,
- g. a current photograph of the predatory sex offender, and
- h. the name and telephone number of the probation or parole officer of the predatory sex offender.

4. The local law enforcement authority shall make the notification provided for in this section regarding a predatory sex offender available to any person upon request.

I. Public officials, public employees, and public agencies are immune from civil liability for good faith conduct under this act.

1. Nothing in this act shall be deemed to impose any liability upon or to give rise to a cause of action against any public official, public employee, or public agency for failing to release information in accordance with this act.

2. Nothing in this section shall be construed to prevent law enforcement officers from notifying members of the public of any persons that pose a danger under circumstances that are not enumerated in this act.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 587, as last amended by Section 7, Chapter 260, O.S.L. 1997 (57 O.S. Supp. 1997, Section 587), is amended to read as follows:

Section 587. Any person required to register pursuant to the provisions of the Sex Offenders Registration Act, ~~Sections~~ Section 581 et seq. of this title, who violates any provision of said act shall, upon conviction, be guilty of a felony punishable ~~by incarceration in a correctional facility for not more than five (5) years, a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment~~ as a Schedule E offense.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-101 of Title 43A, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that a small but extremely dangerous group of sexually violent predators exists who do not have a mental disease or defect that renders them appropriate for involuntary treatment of mentally ill persons defined in Title 43A of the Oklahoma Statutes, which is intended to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under Title 43A of the Oklahoma Statutes, sexually violent predators generally have antisocial personality features

which are unamenable to existing mental illness treatment modalities, and those features render them likely to engage in sexually violent behavior.

The Legislature further finds that the likelihood of a sexually violent predator engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure for mentally ill persons pursuant to Title 43A of the Oklahoma Statutes is inadequate to address the risk these sexually violent predators pose to society.

The Legislature further finds that the prognosis for rehabilitating sexually violent predators in a prison setting is poor, the treatment needs of this population are very long term and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment of mentally ill persons pursuant to Title 43A of the Oklahoma Statutes; therefore, a separate civil commitment procedure for the long-term care and treatment of the sexually violent predator is found to be necessary by the Legislature.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-102 of Title 43A, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Sexually violent predator" means any person who has been convicted of two sexually violent offenses and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence;

2. "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree constituting such person a menace to the health and safety of others;

3. "Predatory" means acts directed towards strangers or individuals with whom relationships have been established or promoted for the primary purpose of victimization;

4. "Sexually violent offense" means:

- a. rape pursuant to Section 1114 of Title 21 of the Oklahoma Statutes,
- b. rape by instrumentation pursuant to Section 1111.1 of Title 21 of the Oklahoma Statutes,
- c. lewd, indecent proposals or acts against a child under sixteen (16), pursuant to Section 1123 of Title 21 of the Oklahoma Statutes,
- d. incest pursuant to Section 885 of Title 21 of the Oklahoma Statutes,
- e. forcible sodomy pursuant to Section 888 of Title 21 of the Oklahoma Statutes,
- f. any conviction for a felony offense in effect at any time prior to the effective date of this act that is comparable to a sexually violent offense as defined in subparagraphs a through e of this paragraph or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this paragraph,
- g. an attempt, conspiracy or criminal solicitation to commit a sexually violent offense as defined in this paragraph, or
- h. any act which, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this act, has been determined beyond a reasonable doubt to have been sexually motivated; and

5. "Agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or

term of confinement and includes the Department of Corrections and the Department of Mental Health and Substance Abuse Services.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-103 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. When it appears that a person may meet the criteria of a sexually violent predator, the agency with jurisdiction shall give written notice of such to the district attorney of the county where that person was charged, sixty (60) days prior to the anticipated release from total confinement of a person who has been convicted of a sexually violent offense.

B. The agency with jurisdiction shall inform the district attorney of the following:

1. The name of the person, identifying factors, anticipated further residence and offense history; and

2. Documentation of institutional adjustment and any treatment received.

C. The agency with jurisdiction, its employees, officials and individuals contracting, appointed or volunteering to perform services hereunder shall be immune from liability for any good faith conduct under this section.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-104 of Title 43A, unless there is created a duplication in numbering, reads as follows:

When it appears that a person presently confined meets the criteria of a sexually violent predator and is about to be released, the district attorney of the county where the person was convicted or the Attorney General, if requested by the district attorney, may file a petition within forty-five (45) days of the date the prosecuting attorney received the written notice by the agency of jurisdiction as provided in Section 6 of this act, alleging that the

person is a sexually violent predator and stating sufficient facts to support such allegation.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-105 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Upon filing of a petition under Section 7 of this act, a judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made, the judge shall direct that person be evaluated for determination as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-106 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Within forty-five (45) days after the filing of a petition pursuant to Section 7 of this act, the court shall conduct a hearing to determine whether the person is a sexually violent predator. At all stages of the proceedings under this act, any person subject to this act shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist the person. Whenever any person is subjected to an examination under this act, the person may retain experts or professional persons to perform an examination on behalf of that person. When the person wishes to be examined by a qualified expert or professional person chosen by that person, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court, upon the request of the person, shall assist the person in obtaining an expert or professional person to perform an examination or

participate in the trial on the behalf of the person. The person or the district attorney or Attorney General shall have the right to demand that the trial be before a jury. Such demand for the trial to be before a jury shall be filed, in writing, at least four (4) days prior to trial. The jury shall be composed of six persons having the qualifications of jurors in courts of record. If no demand is made, the trial shall be before the court.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-107 of Title 43A, unless there is created a duplication in numbering, reads as follows:

The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. If the determination that the person is a sexually violent predator is made by a jury, the determination shall be by unanimous verdict of the jury. The verdict or court decision may be appealed. If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the Department of Mental Health and Substance Abuse Services for control, care and treatment until such time as the person is no longer a threat to the public. Such control, care and treatment shall be provided at a facility operated by the Department of Mental Health and Substance Abuse Services. At all times, persons committed for control, care and treatment by the Department of Mental Health and Substance Abuse Services pursuant to this act shall be kept in a secure facility, and such persons shall be segregated at all times from any other patient under the supervision of the Commissioner of the Department of Mental Health and Substance Abuse Services. Commencing November 1, 1998, such persons committed pursuant to this act shall be kept in a facility or building separate from other patients under the supervision of the Commissioner. If the court or jury is not satisfied beyond a reasonable doubt that the person is a sexually violent predator, the court shall direct the release of the person.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-108 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Each person committed under this act shall have a current examination of the mental condition of the person made once every year. The person may retain or, if the person is indigent and so requests, the court may appoint a qualified professional person to examine the person, and such expert or professional person shall have access to all records concerning the person. The yearly report shall be provided to the court that committed the person under this act. The court shall conduct an annual review of the status of the committed person. Nothing contained in this act shall prohibit the person from otherwise petitioning the court for discharge at this hearing. The Commissioner of the Department of Mental Health and Substance Abuse Services shall provide the committed person with an annual written notice of the right of the person to petition the court for release over the objection of the Commissioner. The notice shall contain a waiver of rights. The Commissioner shall forward the notice and waiver form to the court with the annual report. The committed person shall have a right to have an attorney represent the person at the hearing, but the person is not entitled to be present at the hearing. If the court at the hearing determines that probable cause exists to believe that the person is no longer a threat to the public and will not engage in acts of sexual violence if discharged, then the court shall set a hearing on the issue. At the hearing, the committed person shall be entitled to be present and entitled to the benefit of all constitutional protections that were afforded the person at the initial commitment proceeding. The district attorney or the Attorney General, if requested by the district attorney, shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person

shall also have the right to have experts evaluate the person on behalf of the person, and the court shall appoint an expert if the person is indigent and requests an appointment. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the mental abnormality or personality disorder of the committed person remains such that the person is not safe to be at large and, if released, is likely to engage in acts of sexual violence.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-109 of Title 43A, unless there is created a duplication in numbering, reads as follows:

The involuntary detention or commitment of persons under this act shall conform to constitutional requirements for care and treatment.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-110 of Title 43A, unless there is created a duplication in numbering, reads as follows:

If the Commissioner of the Department of Mental Health and Substance Abuse Services determines that the mental abnormality or personality disorder of a person has so changed that the person is not likely to commit predatory acts of sexual violence if released, the Commissioner shall authorize the person to petition the court for release. The petition shall be served upon the court and the district attorney. The court, upon receipt of the petition for release, shall order a hearing within thirty (30) days. The district attorney or the Attorney General, if requested by the district attorney, shall represent the state and shall have the right to have the petitioner examined by an expert or professional person chosen by the district attorney or Attorney General. The hearing shall be before a jury if demanded by the petitioner or the district attorney or Attorney General. The burden of proof shall be upon the district attorney or Attorney General to show beyond a

reasonable doubt that the mental abnormality or personality disorder of the petitioner remains such that the petitioner is not safe to be at large and, if discharged, is likely to commit predatory acts of sexual violence.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-111 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Nothing in this act shall prohibit a person from filing a petition for discharge pursuant to this act. However, if a person has previously filed a petition for discharge with the Commissioner of the Department of Mental Health and Substance Abuse Services approval and the court determined, either upon review of the petition or following a hearing, that the petition was frivolous or that the condition of the petitioner had not so changed that the person was safe to be at large, then the court shall deny the subsequent petition unless the petition contains facts upon which a court could find the condition of the petitioner has so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from committed persons without the approval of the Commissioner, the court shall endeavor whenever possible to review the petition and determine if the petition is based upon frivolous grounds and, if so, shall deny the petition without a hearing.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-112 of Title 43A, unless there is created a duplication in numbering, reads as follows:

The Commissioner of the Department of Mental Health and Substance Abuse Services shall be responsible for all costs relating to the evaluation and treatment of persons committed to the custody of the Commissioner under any provision of this act. Reimbursement may be obtained by the Commissioner for the cost of care and treatment of persons committed to the custody of the Commissioner.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-113 of Title 43A, unless there is created a duplication in numbering, reads as follows:

In addition to any other information required to be released under this act and prior to the release of a person committed under this act, the Commissioner of the Department of Mental Health and Substance Abuse Services shall give written notice of such release to any victim of the activities or crime of the person who is alive and whose address is known to the Commissioner or, if the victim is deceased, to the family of the victim, if the address of the family is known to the Commissioner. Failure to notify shall not be a reason for postponement of release. Nothing in this section shall create a cause of action against the state or an employee of the state acting within the scope of employment as a result of the failure to notify pursuant to this action.

SECTION 17. This act shall become effective November 1, 1998.

Passed the House of Representatives the 2nd day of March, 1998.

Speaker of the House of Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 1998.

President of the Senate