

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2871

By: Paulk

AS INTRODUCED

An Act relating to mental health; stating legislative findings; defining terms; providing for certain notices regarding sexually violent predators; establishing court procedures to be followed for commitment of sexually violent predators; stating rights of person alleged to be sexually violent predator; providing for yearly examination of committed persons; establishing procedures to be followed for release from commitment; providing for reimbursement of costs; requiring notice prior to release of committed persons; establishing process for designating crime as sexually motivated; providing for codification; and providing an effective date.

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

SECTION 1. 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 as 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 as 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 2. 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 or charged with a sexually violent offense 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 motivated" means that one of the purposes for which the defendant committed the crime was for the purpose of sexual gratification of the defendant;

5. "Sexually violent offense" means:

- a. rape pursuant to Section 1114 of Title 21 of the Oklahoma Statutes,
- b. rape by instrumentation,
- c. lewd, indecent proposals or acts against a child under sixteen (16) years of age, 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

6. "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 3. 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:

1. The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

2. Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial; or

3. Release of a person who has been found not guilty by reason of insanity 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 4. 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 for a listed criminal act 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 charged 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 3 of this act, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

SECTION 5. 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 4 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 transferred to an appropriate facility for an evaluation 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 6. 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 4 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 7. 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:

A. 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.

B. If the person charged with a sexually violent offense has been found incompetent to stand trial, is about to be released from the custody of the state, and commitment of the person is sought pursuant to subsection A of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the incompetence or developmental disability of the person affected the outcome of the hearing, including its effect on the ability of the person to consult with and assist counsel and to testify on such person's own behalf, the extent to which the

evidence could be reconstructed without the assistance of the person and the strength of the evidence presented by the state. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, the court shall enter a final order, appealable by the person, on that issue and may proceed to consider whether the person should be committed pursuant to this section.

SECTION 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 12-114 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The district attorney shall file a special allegation of sexual motivation within ten (10) days after arraignment in every criminal case other than sexually violent offenses as listed in paragraph 5 of Section 2 of this act and amendments thereto, when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

B. In a criminal case wherein there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury, if it finds the defendant guilty, also shall find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sexually violent offenses as defined in paragraph 5 of Section 2 of this act.

C. The district attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful.

SECTION 15. This act shall become effective November 1, 1998.

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