

SHORT TITLE: Sex offenders; establishing procedure for judicial determination of a sexual predator; creating a civil commitment procedure for certain violent predator sex offenders. Effective date. Emergency.

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

SENATE BILL NO. 1274

By: Smith

AS INTRODUCED

An Act relating to sex offenders; amending 57 O.S.

1991, Sections 581, 582, 583, 584 and 585, as last amended by Sections 2, 3, 4, 5 and 6, Chapter 260, O.S.L. 1997, 586, as amended by Section 6, Chapter 142, O.S.L. 1995, and 587, as last amended by Section 7, Chapter 260, O.S.L. 1997 (57 O.S. Supp. 1997, Sections 581, 582, 583, 584, 585, 586, and 587), which relate to the Sex Offenders Registration Act; clarifying language; modifying legislative findings; modifying certain crimes for purpose of registration; making registration a requirement for certain inmates; providing for sexual predator registration; requiring court determination for certain registration; making certain registration open to public inspection; providing for annual registration; including deferred sentence; requiring the Department of Corrections to maintain certain information; modifying extent of information to be maintained; providing exception for address verification on certain confined offenders; establishing procedures for judicial determination of predatory sex offenders; modifying availability of state and local sex offender registries; modifying information to be included in notifications; requiring certain facilities explain certain duty

to register upon release of certain person;  
creating a civil commitment procedure for sex  
offenders; stating certain legislative findings;  
defining terms; establishing multidisciplinary  
team; providing certain immunity; providing certain  
notice, reviews and hearings; establishing certain  
review committee; requiring certain petition be  
filed; authorizing detention of defendant;  
providing due process; requiring commitment of  
adjudicated sexually violent predators; providing  
probable cause hearing; specifying certain  
defendant rights; requiring certain evaluation by  
certain professional or expert; requiring trial;  
authorizing certain representation and evaluations;  
authorizing certain payment for certain services;  
allowing jury trial; specifying procedure for  
selection of jury members; allowing appeal of  
certain determination; providing for certain  
commitment to the Department of Mental Health and  
Substance Abuse Services; providing for segregation  
in secure facility; authorizing certain interagency  
contract; stating effect of mistrial; requiring  
certain procedure in event of certain incompetency;  
making rules of evidence applicable; requiring  
specific findings before proceeding with hearing;  
requiring annual examination of mental condition;  
requiring certain report by certain person;  
requiring annual notice for purpose of release  
consideration; providing for certain release  
hearing; restricting defendant's attendance at  
certain hearing; requiring certain burden of proof  
of state to maintain or obtain commitment; stating

effect of frivolous petition; directing responsibility for costs and care; authorizing certain reimbursement; requiring certain notification to victims; construing certain provisions; providing for special allegations on certain offenses; requiring notice and hearing; prohibiting certain withdrawal; providing certain exception to withdrawal; providing for release and sealing of certain records; providing severability; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 57 O.S. 1991, Section 581, as last amended by Section 2, Chapter 260, O.S.L. 1997 (57 O.S. Supp. 1997, Section 581), is amended to read as follows:

Section 581. A. ~~Sections~~ Section 581 et seq. of this title shall be known and may be cited as the "Sex Offenders Registration Act".

B. The Oklahoma State Legislature finds that sex offenders who commit ~~other predatory~~ acts against children or other persons and persons who sexually prey on others as a result of mental illness pose a high risk of re-offending after release from custody. The Legislature further finds that the privacy interest of such persons adjudicated guilty of ~~these~~ certain sex crimes is less important than the state's interest in public safety. The Legislature additionally finds that a system of identification and registration for predatory sex offenders will permit law enforcement officials to

identify and alert the public when necessary ~~for protecting to~~  
protect the public safety.

SECTION 2. 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 or deferred 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, 865 et seq.,~~ Section 885, 886, 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~~ 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 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, 865 et seq.,~~ 885, 886, 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 jail or penal~~ institution ~~of the Department of Corrections~~, unless the inmate is allowed access to the public through work release or other minimal custody placement.

SECTION 3. AMENDATORY 57 O.S. 1991, Section 583, as last amended by Section 4, Chapter 260, O.S.L. 1997 (57 O.S. Supp. 1997, Section 583), is amended to read as follows:

Section 583. A. Any person who becomes subject to the provisions of the Sex Offenders Registration Act, Section 581 et seq. of this title, on or after November 1, 1989, shall register as follows:

1. ~~With~~ Annually with the Department of Corrections and the initial registration shall be within three (3) business days of being convicted or receiving a suspended or deferred sentence if the person is not incarcerated, or within three (3) business days of release of the person from a ~~correctional~~ jail or penal institution, except as provided in subsection B of this section; and

2. ~~With~~ Annually with the local law enforcement authority having jurisdiction in the area where the person resides or intends to reside for more than seven (7) days. The registration pursuant to this paragraph is required within three (3) days after entering the jurisdiction of the law enforcement authority.

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.

B. Any person who has been convicted of ~~an~~ a sex offense on or after November 1, 1989, in another jurisdiction, which offense if

committed or attempted in this state, would have been punishable as one or more of the offenses listed in Section 582 of this title and who enters and remains in this state shall register as follows:

1. With the Department of Corrections when the person enters and intends to be in the state for thirty (30) days or longer. Such registration is required within ten (10) days after entering the state and annually thereafter, as provided in subsection A of this section, if the person remains in this state; and

2. With the local law enforcement authority having jurisdiction in the area where the person intends to reside or to stay for more than seven (7) days. The registration is required with local law enforcement within three (3) days after entering the jurisdiction of the law enforcement authority and annually thereafter, as provided in subsection A of this section, if the person remains in the jurisdiction.

C. ~~The registration~~ Each offender subject to the provisions of the Sex Offenders Registration Act shall be required to register as provided in this section with the Department of Corrections ~~required by this section shall be maintained by the Department of Corrections and the local law enforcement authority each year~~ for a period of ten (10) years from the date of initial registration, except persons receiving a deferred sentence shall register only during the term of the deferred sentence. The number of years required for registration may be extended by court order for predatory sex offenders.

D. The registration ~~with~~ of each offender shall be maintained by the Department of Corrections and the local law enforcement authority ~~required by this section shall be maintained by such authority for~~ in such a manner as to determine the number of years an offender has registered and is required to register, and to reflect other pertinent information about the offender. The registration form shall be kept for five (5) years following the

conclusion of the mandatory registration period as provided in this section or as ordered by the court.

E. When registering an offender as provided in this section the Department of Corrections ~~or~~ and the local law enforcement agency having jurisdiction shall:

1. Inform the offender of the duty to register and obtain the information required for registration as described in this section;

2. Inform the offender that if the offender changes ~~address~~ residence, the offender shall give notification of the new residence address to the Department of Corrections in writing no later than three (3) days before the offender establishes residence or is temporarily domiciled at the new address;

3. Inform the offender that if the offender changes ~~address~~ residence to another state or is temporarily residing in another state, the offender shall ~~register~~ give notification of the new address ~~with~~ to the Department of Corrections and ~~with a~~ to the designated law enforcement agency in this state and the new state, if the new state has a registration requirement, not later than ten (10) days before the offender establishes residency or is temporarily domiciled in the new state, ~~if the new state has a registration requirement~~; and

4. Require the offender to read and sign a form stating that the duty of the person to register ~~under this act~~ pursuant to the Sex Offenders Registration Act has been explained.

SECTION 4. 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, date of birth, sex, race, height, weight, eye color, social security number, and driver license number and state of issue;

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 or deferred sentence, where the offense was committed, where the person was convicted or received the suspended or deferred sentence, and the name under which the person was convicted or received the suspended or deferred sentence;

4. The name and location of each hospital, treatment center, jail 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~~ this state. 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. 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 the provisions of this act. If the offender has been determined to be a predatory sex offender by the ~~Department of Corrections~~ court as provided in this act, the address verification shall be conducted every ninety (90) days, unless the person has been confined pursuant to commitment procedures for sexually violent predators as provided in this act.

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~~ the Sex Offender Registration 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 or received a suspended or deferred sentence, where the offense was committed, the date of the conviction ~~and~~ or disposition, the terms of the sentence imposed, ~~if applicable~~ and the court imposing the sentence; and

3. A photograph and the fingerprints of the offender.

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 local law enforcement authority within three (3) business days after the change of address~~ is judicially determined to be a predatory sex offender shall be listed in a predator sex offender registry which registry shall be open to public inspection and maintained by the Department of Corrections.

E. The Department of Corrections shall maintain a current 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~~ The general registration file shall not be made available for public inspection pursuant to rules promulgated by the Department of Corrections; provided, however, the Department may respond to written inquiries for a name verification against the registration file. Written inquiries must provide the following information for a name search:

1. The name of the person believed to be subject to the provisions of the Sex Offenders Registration Act;
2. The person's current address; and
3. The person's physical description or the driver license number or social security number of such person.

The Department of Corrections may charge a fee for a name search against the registration file. The Department shall provide all municipal police departments and all county sheriff departments a list of those sex offenders registered and living in their respective county for verification to the local registry.

F. Each local law enforcement agency ~~shall make~~ is authorized to provide information from its sex offender registry available as follows and may charge a fee for a name search against the registry:

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 custodial parent using a licensed 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; and

7. To the public upon a written request for a name search.

When a law enforcement agency sends a copy of or otherwise makes ~~the~~ information available from its sex offender registry ~~available~~ to any entity listed in paragraph 1 or 2 of this subsection, the agency shall provide a notice using the following or similar language: "A person whose name appears on this registry has been ~~convicted of~~ sentenced for a sex offense. Continuing to employ a person to work with children whose name appears on this registry may result in civil liability for the employer".

The information provided to any person or entity from the sex offender registry shall not contain the residential address of any sex offender, but may contain information which locates the offender within the vicinity of schools, parks, churches, child care facilities or other places where children may become victims.

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~~ The 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~~ is 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 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~~  
On and after July 1, 1998, at the time of sentencing any person for

any sex offense required to be registered pursuant to the Sex Offenders Registration Act, the court may on its own motion, or upon motion of the district attorney, make a judicial determination that the offender is a predatory sex offender and must be registered as such when there is a compelling interest of the state to protect the public against the acts of the defendant. The court shall consider, but not be limited to:

1. Whether or not any victim is a child under ten (10) years of age;

2. Whether or not the offender has one or more prior convictions for any sex offense in this state or another state where the victim was a child or the sex offense was violent;

3. Whether or not the offender has a history of sex offenses;

4. Whether or not the offender has any mental condition, abnormality, disability, or illness, or suffers from any other condition, abnormality, or other disability which represents a continuing threat to the public for sex crimes by the defendant;

5. Whether or not the sex offense was particularly heinous or atrocious; and

6. Whether or not the sex crime was committed in association with any offense of kidnapping, trafficking in children, or child stealing.

At the hearing, the court shall allow testimony and evidence or may rely on the testimony and evidence presented in the trial proceedings. The defendant shall be allowed to present evidence in defense. The determination of any defendant as a predatory sex offender by the court shall be entered upon the judgment and sentence and shall require registration pursuant to the Sex Offenders Registration Act as a sexual predator.

~~2.~~ I. 1. Upon registration of any person designated as a predatory sex offender, a the 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.~~ 2. 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 terms and conditions or restrictions upon of the probation, parole or conditional release sentence of the predatory sex offender,
- ~~e.~~ d. a description of the primary and secondary targets of the predatory sex offender,
- ~~f.~~ e. a description of the method ~~of~~ used to entice victims or commit the offense of the predatory sex offender, and
- ~~g.~~ f. 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.~~ 3. 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.~~ J. Public officials, public employees, and public agencies are immune from civil liability for good faith conduct under ~~this act~~ the Sex Offenders Registration Act.

1. Nothing in ~~this act~~ the Sex Offenders Registration 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~~ the Sex Offenders Registration 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~~ for predatory sex offenders.

SECTION 5. AMENDATORY 57 O.S. 1991, Section 585, as last amended by Section 6, Chapter 260, O.S.L. 1997 (57 O.S. Supp. 1997, Section 585), is amended to read as follows:

Section 585. A. Each person in charge of a ~~correctional jail,~~ hospital, treatment center, or penal institution from which a person subject to the provisions of the Sex Offenders Registration Act, Section 581 et seq. of this title, is released, and each judge who suspends or defers the sentence of a person subject to the provisions of the Sex Offenders Registration Act shall prior to discharge or release of ~~said~~ the person:

1. Explain to the person the duty to register pursuant to the Sex Offenders Registration Act;

2. Require the person to sign a written statement that the duty to register has been explained and the person understands the duty to register and that a criminal penalty may be imposed for failure to register as required by law;

3. Obtain the address at which the person is to reside upon discharge or release; and

4. Forward ~~said~~ the information obtained from paragraphs 1 through 3 of this subsection to the Department of Corrections within three (3) days.

B. The Department of Public Safety shall issue written notification of the registration requirements of the Sex Offenders Registration Act to any person who enters this state from another jurisdiction and makes an initial application for ~~an operator's or chauffeur's~~ a driver license to operate a motor vehicle in this state.

C. The Department of Corrections shall coordinate with the Administrative Office of the Courts in promulgating rules to establish other necessary procedures for notifying offenders of the obligation to register pursuant to ~~this act~~ the Sex Offenders Registration Act and procedures for registration of those offenders.

SECTION 6. AMENDATORY 57 O.S. 1991, Section 586, as amended by Section 6, Chapter 142, O.S.L. 1995 (57 O.S. Supp. 1997, Section 586), is amended to read as follows:

Section 586. ~~Ne~~ It is unlawful for any person subject to the provisions of the Sex Offenders Registration Act, Sections Section 581 et seq. of this title, shall to furnish or attempt to furnish any false or misleading information in the registration required by said act Section 583 of this title. Any person convicted of a violation of this section shall be punished as provided in Section 587 of this title.

SECTION 7. 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~~. The person may be punished by imprisonment, a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589 of Title 57, unless there is created a duplication in numbering, reads as follows:

The Oklahoma State 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 pursuant to treatment for 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 such person 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 the person likely to engage in sexually violent behavior. The Legislature further finds that sexually violent predators' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment procedure pursuant to treatment for mentally ill persons 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 persons appropriate for commitment for mental illness, therefore a civil commitment procedure for the long-term care and treatment of sexually violent predators is found to be necessary by the Legislature.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.1 of Title 57, unless there is created a duplication in numbering, reads as follows:

As used in Sections 8 through 23 of 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 the predatory acts of sexual violence if not confined in a secure facility;

2. "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes a 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 the defendant's sexual gratification;

5. "Sexually violent offense" means:

- a. rape as defined in Sections 1111 and 1114 of Title 21 of the Oklahoma Statutes,
- b. forcible sodomy as defined in Section 888 of Title 21 of the Oklahoma Statutes,
- c. solicitation of a child as defined in subsection B of Sections 1021 and 1021.2 of Title 21 of the Oklahoma Statutes,
- d. sexual exploitation of a child as defined in Section 1021.3 of Title 21 of the Oklahoma Statutes,
- e. lewd or indecent proposals to a child as defined in Section 1123 of Title 21 of the Oklahoma Statutes,

- f. rape by instrumentation as defined in Section 1111.1 of Title 21 of the Oklahoma Statutes,
- g. sexual abuse of a child as defined in Sections 843 and 845 of Title 21 of the Oklahoma Statutes,
- h. 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 g 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 section,
- i. an attempt, conspiracy or criminal solicitation of a sexually violent offense as defined in this section,  
or
- j. any act which either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to the provisions of this act, has been determined beyond a reasonable doubt to have been sexually motivated; and

6. "Agency with jurisdiction" means that agency which releases upon lawful order or authority a person serving a sentence or term of confinement and includes the Department of Corrections and the Pardon and Parole Board.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.2 of Title 57, 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 as defined in Section 9 of this act, the agency with jurisdiction shall give written notice of such to the Attorney General and the multidisciplinary team established in subsection D of this section, ninety (90) days prior to:

1. The anticipated release from total confinement of a person who has been convicted of a sexually violent offense, except that in the case of a person who is returned to prison for no more than ninety (90) days as a result of revocation of postimprisonment supervision, written notice shall be given as soon as practicable following the person's readmission to prison;

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 pursuant to lawful authority;

3. Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to lawful authority; or

4. Release of a person who has been found not guilty of a sexually violent offense.

B. The agency with jurisdiction shall inform the Attorney General and the multidisciplinary team established in subsection D of this section of the following:

1. The person's name, identifying factors, anticipated future residence, and offense history; and

2. Documentation of institutional adjustment and any treatment received.

C. The agency with jurisdiction, its employees, officials, members of the multidisciplinary team established in subsection D of this section, members of the prosecutor's review committee appointed as provided in subsection E of this section, and individuals contracting, appointed or volunteering to perform services pursuant to the provisions of this act shall be immune from liability for any good-faith conduct under this act.

D. The Secretary of the Department of Safety and Security shall establish a multidisciplinary team which may include individuals from other state agencies to review available records of each person referred to such team pursuant to subsection A of this section. The

team, within thirty (30) days of receiving notice, shall assess whether or not the person meets the definition of a sexually violent predator as established in Section 9 of this act. The team shall notify the Attorney General of its assessment.

E. The Attorney General shall appoint a prosecutor's review committee to review the records of each person referred to the Attorney General pursuant to subsection A of this section. The prosecutor's review committee shall assist the Attorney General in the determination of whether or not the person meets the definition of a sexually violent predator. The assessment of the multidisciplinary team shall be made available to the Attorney General and the prosecutor's review committee.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.3 of Title 57, unless there is created a duplication in numbering, reads as follows:

When it appears that a person presently confined may be a sexually violent predator and the multidisciplinary team and the prosecutor's review committee appointed as provided in Section 10 of this act has determined that the person meets the definition of a sexually violent predator, the Attorney General may file a petition, within seventy-five (75) days of the date the Attorney General received the written notice by the agency of jurisdiction as provided in subsection A of Section 10 of this act, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.4 of Title 57, unless there is created a duplication in numbering, reads as follows:

A. Upon filing a petition under Section 11 of this act, the 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

taken into custody unless the person is already in custody. If the person is in custody by a law enforcement agency or the Department of Corrections, the court shall direct that person be held for purpose of the proceedings established by this act.

B. Within seventy-two (72) hours after a person is taken into custody or the custodial agency is notified pursuant to subsection A of this section, such person shall be provided with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the detained person is a sexually violent predator. At this hearing the court shall:

1. Verify the person's identity; and
2. Determine whether probable cause exists to believe that the person is a sexually violent predator. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

C. At the probable cause hearing as provided in subsection B of this section, the person shall have the following rights in addition to the rights previously specified:

1. To be represented by counsel;
  2. To present evidence on such person's behalf;
  3. To cross-examine witnesses who testify against such person;
- and
4. To view and copy all petitions and reports in the court file.

D. If the probable cause determination is made, the court shall direct that the person be transferred to an appropriate secure facility, including, but not limited to, a county jail, for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be a qualified expert or a professional qualified to conduct such an examination.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.5 of Title 57, unless there is created a duplication in numbering, reads as follows:

Within sixty (60) days after the completion of any hearing held pursuant to Section 12 of this act, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. 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 such person. Whenever any person is subjected to an examination under this act, such person may retain qualified experts or professionals to perform an examination on such person's behalf. When the person wishes to be examined by a qualified expert or professional of such person's own choice, 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 person's request, shall determine whether the services are necessary and set reasonable compensation for such services. If the court determines that the services are necessary and the qualified expert's or professional's requested compensation for such services is reasonable, the court shall assist the person in obtaining an expert or professional to perform an examination or participate in the trial on the person's behalf. The court shall approve payment for such services upon the filing of a certified claim for compensation supported by a written statement specifying the time expended, services rendered, expenses incurred on behalf of the person and compensation received in the same case or for the same services from any other source. The

person, the Attorney General, or the judge 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. Number and selection of jurors shall be determined as provided by law for criminal trials. If no demand is made, the trial shall be before the court.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.6 of Title 57, 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 a determination that the person is a sexually violent predator is made by a jury, such determination shall be by unanimous verdict of the jury. The determination 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 the Department of Mental Health and Substance Abuse Services for control, care and treatment until such time as the person's mental abnormality or personality disorder has so changed that the person is safe to be at large. The 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 to 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 Department of Mental Health and Substance Abuse Services. The Department of Mental Health and Substance Abuse Services is authorized to enter into an interagency agreement with the Department of Corrections for the confinement of such persons. Such persons who are in the confinement of the Department of Corrections pursuant to an interagency agreement shall be housed and managed separately from other offenders in the custody

of the Department of Corrections, except for occasional instances of supervised incidental contact. 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 person's release. Upon a mistrial, the court shall direct that the person be held at an appropriate secure facility, including, but not limited to, a county jail, until another trial is conducted. Any subsequent trial following a mistrial shall be held within ninety (90) days of the previous trial, unless such subsequent trial is continued as provided in Section 13 of this act.

B. If a person charged with a sexually violent offense has been found incompetent to stand trial, and is about to be released from custody, and such person's commitment is sought pursuant to the provisions of this act, 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 person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability 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 prosecution's case. 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 the provisions of this act.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.7 of Title 57, unless there is created a duplication in numbering, reads as follows:

Each person committed pursuant to the provisions of this act shall have a current examination of the person's mental condition made once every year by the Department of Mental Health and Substance Abuse Services. The person may retain, or, if the person is indigent and so requests the court may appoint a qualified expert or professional to examine such person, and such expert or professional 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 person's right to petition the court for release over the Commissioner's objection. 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 to 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's mental abnormality or personality disorder has so changed that the person is safe to be at large 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

proceedings. The Attorney General 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 a qualified expert or professional evaluate the person on the person's behalf and the court shall appoint an expert or professional if the person is indigent and requests such evaluation. The burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that the committed person's mental abnormality or personality disorder 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 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.8 of Title 57, unless there is created a duplication in numbering, reads as follows:

The involuntary detention or commitment of any person pursuant to the provisions of Sections 9 through 23 of this act shall conform to constitutional requirements for care and treatment.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.9 of Title 57, 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 person's mental abnormality or personality disorder 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 Attorney General. The court, upon receipt of the petition for release, shall order a hearing to be held within thirty (30) days. The Attorney General shall represent the state, and shall have the right to have the petitioner examined by a qualified expert or professional of such attorney's choice. The hearing shall be before a jury if demanded by either the petitioner or the Attorney

General. The burden of proof shall be upon the state to show beyond a reasonable doubt that the petitioner's mental abnormality or personality disorder 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 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.10 of Title 57, unless there is created a duplication in numbering, reads as follows:

Nothing in Sections 9 through 23 of this act shall prohibit a person from filing a petition for discharge at any time. However, if a person has previously filed a petition for discharge without the approval of the Commissioner of the Department of Mental Health and Substance Abuse Services and the court determined either upon review of the petition or following a hearing that the petitioner's petition was frivolous or that the petitioner's condition 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 had so changed that a hearing was warranted. Upon receipt of a first or subsequent petition from the committed person without the Commissioner's approval, 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 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.11 of Title 57, 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 Department's custody under any provision of Sections 8 through 23 of this act. Reimbursement may be obtained by the Department of

Corrections for the cost of care and treatment of persons committed to the Department of Correction's custody under this act.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.12 of Title 57, unless there is created a duplication in numbering, reads as follows:

In addition to any other information required to be released under this act, prior to the release of a person committed under Sections 8 through 23 of this act, the Commissioner of the Department of Mental Health and Substance Abuse Services and the Secretary of the Department of Safety and Security shall each give written notice of such release to any victim who is alive and whose address is known to the Commissioner and Secretary or, if the victim is deceased, to the victim's family, if the family's address is known. 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 the employee's position as a result of the failure to notify pursuant to this section.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.13 of Title 57, 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 sex offenses defined in Section 9 of this act, 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 as provided in this section, 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 held, 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 sex offenses as defined in Section 9 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 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.14 of Title 57, unless there is created a duplication in numbering, reads as follows:

In order to protect the public, relevant information and records which are otherwise confidential or privileged shall be released to the agency with jurisdiction or the Attorney General for the purpose of meeting the notice requirement provided in Section 10 of this act and determining whether a person is or continues to be a sexually violent predator.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.15 of Title 57, unless there is created a duplication in numbering, reads as follows:

Any psychological reports, drug and alcohol reports, treatment records, reports of the diagnostic center, medical records or victim impact statements which have been submitted to the court or admitted into evidence pursuant to any provision of this act shall be part of the record but shall be sealed and opened only on order of the court or as otherwise provided in Sections 9 through 23 of this act.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 589.16 of Title 57, unless there is created a duplication in numbering, reads as follows:

If any provision of Sections 9 through 23 of this act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application and, to this end, the provisions of this act are severable.

SECTION 25. This act shall become effective July 1, 1998.

SECTION 26. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-2-1799

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