

STATE OF OKLAHOMA

2nd Session of the 50th Legislature (2006)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3008

By: Morgan (Fred)

COMMITTEE SUBSTITUTE

An Act relating to crimes and punishments; appropriating funds to Department of Corrections for housing and treatment of certain persons; making certain actions unlawful; providing penalty; stating legislative findings; defining terms; providing for certain notices regarding sexually violent predators; providing immunity for certain persons; establishing court procedures for commitment of sexually violent predators; stating rights of person alleged to be a sexually violent predator; providing for the appointment of counsel; authorizing retainment of experts for examinations; providing access to certain records; authorizing certain persons to demand a jury trial; providing jury trial guidelines; establishing confinement and segregation requirements; directing person be released under certain circumstances; providing procedures for mistrials; establishing commitment procedures for persons previously found incompetent; providing for yearly examination of committed persons; requiring annual review by the court of committed persons; establishing procedures for transitional release; authorizing and establishing procedures for removal from the transitional release program; authorizing person to petition for transitional release upon approval by certain person; establishing procedures for transitional release; establishing procedures for conditional release; providing treatment plan guidelines; establishing procedures for final discharge of committed person; authorizing return of person to confinement under certain circumstances; establishing procedures for persons returned to confinement from conditional release; prohibiting the eligibility of certain person for certain release measures; directing conformity to certain constitutional requirements; establishing guidelines for persons petitioning for release or discharge; providing for reimbursement of costs; requiring certain agency to provide treatment services; requiring notice prior to release of committed persons; providing for the release of certain records; requiring certain records be sealed; establishing process for designating crime as sexually motivated; providing severability clause; providing for codification; providing for noncodification; and providing an effective date.

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

SECTION 1. There is hereby appropriated to the Department of Corrections from any monies not otherwise appropriated from the General Revenue Fund of the State Treasury for the fiscal year ending June 30, 2007, the sum of Five Hundred Thousand Dollars (\$500,000.00) or so much thereof as may be necessary to house and treat sexually violent predators.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 446 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person who has been committed to the custody of the Department of Corrections pursuant to Section 9 of this act and who escapes from said custody, either while actually confined or while assigned to a transitional or conditional release program shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for not less than two (2) years nor more than seven (7) years.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-101 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 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-102 of Title 43A, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "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;
2. "Director" means the Director of the Department of Corrections;
3. "Likely to engage in repeat act of sexual violence" means the propensity of the person to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others;
4. "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;

5. "Person" means an individual who is a potential or actual subject of proceedings under this act;

6. "Sexually motivated" means that one of the purposes for which the person committed the crime was for the purpose of sexual gratification;

7. "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;

8. "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 repeat acts of sexual violence;

9. "Transitional release" means any halfway house, work release, or other placement designed to assist in the adjustment and reintegration of the person into the community once released from commitment; and

10. "Treatment staff" includes the staff of the Department of Corrections and the Department of Mental Health and Substance Abuse Services that provide treatment, supervision, other services for sexually violent predators.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-103 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, as defined in Section 4 of this act, 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 future 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 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-104 of Title 43A, unless there is created a duplication in numbering, reads as follows:

When it appears that a person presently confined for a sexually violent offense 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 5 of this act, alleging that the person is a sexually violent predator and stating sufficient facts to support such allegation.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-105 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Upon the filing of a petition under Section 6 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 taken into custody.

B. Within seventy-two (72) hours after a person is taken into custody, the 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 person is a sexually violent predator. At the hearing, the court shall:

1. Verify the identity of the person; and

2. Determine whether probable cause exists to believe that the person is a sexually violent predator.

C. The state may rely upon the petition and supplement the petition with additional documentary evidence or live testimony.

D. At the probable cause hearing, the person is entitled to the following:

1. To be represented by counsel, and if indigent, the court shall appoint counsel to assist the person;

2. To be allowed to present evidence on his or her behalf;

3. To be provided the opportunity to cross-examine witnesses who present testimony against such person; and

4. To be given access to and a copy of all petitions and reports in the court file.

E. If, at the conclusion of the hearing, a probable cause determination is made, the court shall direct that the 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-106 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. Within forty-five (45) days after the completion of the probable cause hearing pursuant to Section 7 of this act, the court shall conduct a trial 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 behalf of the person.

B. The person, the district attorney or the 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 (6) persons having the qualifications of jurors in courts of record. If no demand is made, the trial shall be before the court.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-107 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 Corrections 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 Corrections.

B. At all times, persons committed for control, care and treatment by the Department of Corrections pursuant to this act shall be kept in a secure facility and such persons shall be segregated at all times from any other person under the custody of the Department of Corrections.

C. 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.

D. 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.

E. 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 this act, the court shall first hear evidence and determine whether the person did commit the act or acts charged. 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 the following:

1. Whether the person did commit the act or acts charged;
2. 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 his or her own behalf;
3. The extent to which the evidence could be reconstructed without the assistance of the person; and
4. The strength of the evidence presented by the state.

F. 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 section.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-108 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. 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 Director of the Department of Corrections 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 Director. The notice shall contain a waiver of rights. The Director 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.

B. If the court, at the hearing, determines that probable cause exists to believe that the mental abnormality or personality disorder of the person has so changed that the person is safe to be in transitional release, 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 his or her behalf, 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 placed in transitional release, and if transitionally released, is likely to engage in acts of sexual violence.

C. If, upon conclusion of the hearing, the court or jury is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. If the court or jury determines otherwise, the court shall order that the person be placed in transitional release.

D. If the court determines that the person should be placed in transitional release, the Director of the Department of Corrections shall transfer the person to the transitional release program. During any period the person is in transitional release, that person shall comply with any rules or regulations the Director may establish for the program and every directive of the treatment staff of the transitional release program.

E. At any time during which the person is in the transitional release program and the treatment staff determines that the person has violated any rule, regulation or directive associated with the transitional release program, the treatment staff may remove the person from the transitional release program and return the person to the secure commitment facility, or may request the district court

to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to the secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court by not later than 5:00 p.m. of the first day the district court is open for the transaction of business after the verbal or telephonic request was made.

F. Upon the person being returned to the secure commitment facility from the transitional release program, notice shall be given by the Director of the Department of Corrections to the court. The court shall set the matter for a hearing within two (2) working days of receipt of notice of the person having been returned to the secure commitment facility and cause notice thereof to be given to the district attorney or Attorney General, the person and the Director. The state shall have the burden of proof to show probable cause that the person violated conditions of transitional release. The hearing shall be to the court. At the conclusion of the hearing, the court shall issue an order returning the person to the secure commitment facility or to the transitional release program, and may order such other further conditions with which the person must comply if the person is returned to the transitional release program.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-109 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If the Director of the Department of Corrections determines that the mental abnormality or personality disorder of a person has so changed that the person is not likely to engage in repeat acts of sexual violence if placed in transitional release, the Director shall authorize the person to petition the court for transitional release. The petition shall be served upon the court and the district attorney. The court, upon receipt of the petition for

transitional 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, 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 placed in transitional release, is likely to engage in repeat acts of sexual violence.

B. If, upon conclusion of the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for transitional release, the court shall order that the person remain in secure commitment. Otherwise, the court shall order that the person be placed in transitional release.

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

A. During any period the person is in transitional release, the person, at least once every year and at any other time deemed appropriate by the treatment staff, shall be examined by the treatment staff to determine if the mental abnormality or personality disorder of the person has so changed as to warrant such person being considered for conditional release. The treatment staff shall forward a report of the examination to the court. The court shall review the report of the examination. If the court determines that probable cause exists to believe that the mental abnormality or personality disorder of the person has so changed that the person is safe to be placed in conditional release, the court shall then set a hearing on the issue. 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 person remains such that the person is not safe to be at large and that if placed on conditional release is likely to engage in repeat acts of sexual violence. At the hearing, the 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. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the district attorney or the Attorney General, the person, and the Director of the Department of Corrections.

B. If, after the hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for conditional release, the court shall order that the person remain either in secure commitment or in transitional release. Otherwise, the court shall order that the person be placed on conditional release.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-111 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. If the court determines that the person should be placed on conditional release, the court, based upon the recommendation of the treatment staff, shall establish a treatment plan which the person shall be ordered to follow. The treatment plan may include, but shall not be limited to, the following provisions:

1. Determining where the person shall reside and with whom;
2. Taking prescribed medications;
3. Attending individual and group counseling;
4. Maintaining employment;
5. Having no contact with children;
6. Not frequenting facilities, locations or events in which children are likely to be present; and

7. Not engaging in activities in which contact with children is likely.

Upon a showing by the person that he or she accepts the treatment plan and is prepared to follow the treatment plan, the court shall release the person from the transitional release program.

B. After a minimum of five (5) years have passed in which the person has been free of violations of conditions of the treatment plan, the treatment staff, or other professionals directed by the court may examine the person to determine if the mental abnormality or personality disorder of the person has changed so as to warrant the person being considered for final discharge. The person preparing the report shall forward the report to the court. The court shall review the report. If the court determines that probable cause exists to believe that the mental abnormality or personality disorder of the person has so changed that the person is safe to be entitled to final discharge, the court shall set a formal hearing on the issue. 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 person remains such that the person is not appropriate for final discharge. At the hearing, the 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. Subsequent to either a court review or a hearing, the court shall issue an appropriate order with findings of fact. The order of the court shall be provided to the district attorney or the Attorney General, the person and the Director of the Department of Corrections.

C. If, after a hearing, the court is convinced beyond a reasonable doubt that the person is not appropriate for final discharge, the court shall continue custody of the person with the Director for placement in a secure facility, transitional release program or conditional release program. Otherwise, the court shall

order the person finally discharged. In the event the court does not order final discharge of the person, the person shall retain the right to annual review.

D. At any time during which the person is on conditional release and the professional person designated by the court to monitor the compliance of the person with the treatment plan determines that the person has violated any material condition of that plan, that professional person may request the district court to issue an emergency ex parte order directing any law enforcement officer to take the person into custody and return the person to a secure commitment facility. Any such request may be made verbally or by telephone, but shall be followed in written or facsimile form delivered to the court not later than 5:00 p.m. of the first day the district court is open for business after the verbal or telephonic request was made.

E. Upon the person being returned to a secure commitment facility from conditional release, notice shall be given by the Director to the court. The court shall set the matter for a hearing within two (2) business days of receipt of notice of the person having been returned to the secure commitment facility. The court shall provide notice to the district attorney or Attorney General, the person and the Director. The burden of proof shall be upon the state to show probable cause that the person violated the conditions of conditional release. At the conclusion of the hearing, the court shall issue an order returning the person to the secure commitment facility, the transitional release program, or to conditional release. The court may order such other further conditions with which the person shall comply if the person is returned to either the transitional release program or to conditional release.

F. The final discharge shall not prevent the person from being prosecuted for any criminal acts which the person is alleged to have

committed or from being subject in the future to a subsequent commitment under the provisions of this act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-112 of Title 43A, unless there is created a duplication in numbering, reads as follows:

Any person for whom a petition, pursuant to this act, has been filed who is in the secure confinement of the state shall not be eligible for bail, bond, house arrest or any other measures releasing the person from the physical, protective custody of the state.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-113 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 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-114 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 transitional release, conditional release or final discharge pursuant to this act. However, if a person has previously filed a petition for transitional release, conditional release or final discharge without the approval of the Director of the Department of Corrections 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 the committed person without the approval

of the Director, 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 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-115 of Title 43A, unless there is created a duplication in numbering, reads as follows:

A. The Director of the Department of Corrections shall be responsible for all costs relating to the evaluation and treatment of persons committed to the custody of the Director under any provision of this act. Reimbursement may be obtained by the Director for the cost of care and treatment of persons committed to the custody of the Director.

B. The Department of Mental Health and Substance Abuse Services shall be responsible for providing all treatment services for sexually violent predators who have been committed to the custody of the Department of Corrections.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-116 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 Director of the Department of Corrections shall give written notice of such release to any victim of the crime for which the person was convicted who is alive and whose address is known to the Director or, if the victim is deceased, to the family of the victim, if the address of the family is known to the Director. 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 as required in this section.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-117 of Title 43A, 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, district attorney or Attorney General for the purpose of meeting the notice requirement, as provided in Section 5 of this act, and determining whether a person is or continues to be a sexually violent predator.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-118 of Title 43A, 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 under this act shall be part of the record but shall be sealed and opened only upon order of the court.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 13-119 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 sex offenses as listed in paragraph 6 of Section 4 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 sex offenses as defined in paragraph 6 of Section 4 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 13-120 of Title 43A, unless there is created a duplication in numbering, reads as follows:

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

SECTION 23. NONCODIFICATION The provisions of Section 1 of this act shall not be codified in the Oklahoma Statutes.

SECTION 24. This act shall become effective November 1, 2006.

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