

1 | ENGROSSED HOUSE  
BILL NO. 3379

By: Terrill of the House

and

Sykes of the Senate

7 | An Act relating to prisons and reformatories;  
8 | amending Section 5, Chapter 159, O.S.L. 2005 (57 O.S.  
9 | Supp. 2009, Section 564.1), which relates to the  
10 | Oklahoma Corrections Act of 1967; clarifying notice  
11 | requirement for petitions for judicial review;  
12 | amending 57 O.S. 2001, Section 584, as last amended  
13 | by Section 6, Chapter 404, O.S.L. 2009 (57 O.S. Supp.  
14 | 2009, Section 584), which relates to the Sex  
15 | Offenders Registration Act; prohibiting courts from  
16 | ordering attorney fees under certain circumstances;  
17 | and providing an effective date.

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

19 | SECTION 1. AMENDATORY Section 5, Chapter 159, O.S.L.  
20 | 2005 (57 O.S. Supp. 2009, Section 564.1), is amended to read as  
21 | follows:

22 | Section 564.1 A. In those instances of prison disciplinary  
23 | proceedings that result in the revocation of earned credits, the  
24 | prisoner, after exhausting administrative remedies, may seek  
judicial review in the district court of the official residence of  
the Department of Corrections. To be considered by the court, the  
inmate shall meet the following requirements:

1 1. The petition shall be filed within ninety (90) days of the  
2 date the petitioner is notified of the final Department of  
3 Corrections decision in the Department disciplinary appeal process.

4 2. The petition shall only name the Department of Corrections  
5 as the respondent and service shall be in accordance with the rules  
6 for service ~~under the laws of this state~~ pursuant to Section 2004 of  
7 Title 12 of the Oklahoma Statutes.

8 3. The petition shall be limited to the review of only one  
9 disciplinary report and no other pleading is allowed other than the  
10 petition and the answer.

11 4. The court shall not consider any pleadings from any  
12 intervening parties and shall not stay the Department disciplinary  
13 process during the review of the misconduct hearing.

14 B. The answer of the Department shall be filed within thirty  
15 (30) days of receipt of the petition unless the court orders a  
16 special report upon motion by one party or upon its own motion.

17 C. The petition shall assert that due process was not provided  
18 and prove which element of due process, relevant only to a prison  
19 administrative disciplinary proceeding, was not provided by the  
20 prison staff.

21 D. The court shall only determine whether due process was  
22 provided by the revoking authority. In determining whether due  
23 process was provided, the court shall determine:  
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1 1. Whether written notice of the charge was provided to the  
2 inmate;

3 2. Whether the inmate had a minimum of twenty-four (24) hours  
4 to prepare after notice of the charge;

5 3. Whether the inmate was provided an opportunity for a hearing  
6 by a prison employee not involved in bringing the charge;

7 4. Whether the inmate had the opportunity to present relevant  
8 documentary evidence;

9 5. Whether the inmate had the opportunity to call witnesses  
10 when doing so would not be hazardous to institutional safety or  
11 burden correctional goals;

12 6. Whether the inmate was provided a written statement as to  
13 the evidence relied on and the reasons for the discipline imposed;  
14 and

15 7. Whether any evidence existed in the record upon which the  
16 hearing officer could base a finding of guilt.

17 E. The judicial review as provided in this section shall not be  
18 an independent assessment of the credibility of any witness or a  
19 weighing of the evidence, and there shall be no right to an error  
20 free proceeding or to confront accusers. The only remedy to be  
21 provided, if the court finds due process was not provided, is an  
22 order to the Department to provide due process.

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1 F. There shall be no recovery allowed for costs and fees,  
2 providing that frivolous petitions are subject to the sanctions  
3 provided by the laws of this state.

4 G. Either party aggrieved by the final order of the district  
5 court on a petition for judicial review may only appeal the order to  
6 the Oklahoma Court of Criminal Appeals as set forth in the rules of  
7 such Court.

8 SECTION 2. AMENDATORY 57 O.S. 2001, Section 584, as last  
9 amended by Section 6, Chapter 404, O.S.L. 2009 (57 O.S. Supp. 2009,  
10 Section 584), is amended to read as follows:

11 Section 584. A. Any registration with the Department of  
12 Corrections required by the Sex Offenders Registration Act shall be  
13 in a form approved by the Department and shall include the following  
14 information about the person registering:

15 1. The name of the person and all aliases used or under which  
16 the person has been known;

17 2. A complete description of the person, including a photograph  
18 and fingerprints, and when requested by the Department of  
19 Corrections, such registrant shall submit to a blood or saliva test  
20 for purposes of a deoxyribonucleic acid (DNA) profile. Submission  
21 to testing for individuals registering shall be within thirty (30)  
22 days of registration. Registrants who already have valid samples on  
23 file in the Oklahoma State Bureau of Investigation (OSBI) DNA  
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1 Offender Database shall not be required to submit duplicate samples  
2 for testing;

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

9 4. The name and location of each hospital or penal institution  
10 to which the person was committed for each offense listed in Section  
11 582 of this title;

12 5. Where the person previously resided, where the person  
13 currently resides, how long the person has resided there, how long  
14 the person expects to reside there, and how long the person expects  
15 to remain in the county and in this state. The Department of  
16 Corrections shall conduct address verification of each registered  
17 sex offender as follows:

18 a. on an annual basis, if the numeric risk level of the  
19 person is one, or

20 b. on a semiannual basis, if the numeric risk level of  
21 the person is two.

22 The Department of Corrections shall mail a nonforwardable  
23 verification form to the last-reported address of the person. The  
24 person shall return the verification form in person to the local law

1 enforcement authority of that jurisdiction within ten (10) days  
2 after receipt of the form and may be photographed by the local law  
3 enforcement authority at that time. The local law enforcement  
4 authority shall require the person to produce proof of the identity  
5 of the person and current address. Upon confirming the information  
6 contained within the verification form, the local law enforcement  
7 authority shall forward the form to the Department of Corrections  
8 within three (3) days after receipt of the form. The verification  
9 form shall be signed by the person and state the current address of  
10 the person. Failure to return the verification form shall be a  
11 violation of the Sex Offenders Registration Act. If the offender  
12 has been determined to be a habitual or aggravated sex offender by  
13 the Department of Corrections or has been assigned a level  
14 assignment of three, the address verification shall be conducted  
15 every ninety (90) days. The Department of Corrections shall notify  
16 the office of the district attorney and local law enforcement  
17 authority of the appropriate county, within forty-five (45) days if  
18 unable to verify the address of a sex offender. A local law  
19 enforcement authority may notify the office of the district attorney  
20 whenever it comes to the attention of the local law enforcement  
21 authority that a sex offender is not in compliance with any  
22 provisions of this act. A local law enforcement authority  
23 designated as the primary registration authority of the person may,  
24 at any time, mail a nonforwardable verification form to the last-

1 reported address of the person. The person shall return the  
2 verification form in person to the local law enforcement authority  
3 that mailed the form within ten (10) days after receipt of the form.  
4 The local law enforcement authority shall require the person to  
5 produce proof of the identity of the person and current address;

6 6. The name and address of any school where the person expects  
7 to become or is enrolled or employed for any length of time;

8 7. A description of all occupants residing with the person  
9 registering, including, but not limited to, name, date of birth,  
10 gender, relation to the person registering, and how long the  
11 occupant has resided there; and

12 8. The level assignment of the person.

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

18 C. The registration with the local law enforcement authority  
19 required by the Sex Offenders Registration Act shall be in a form  
20 approved by the local law enforcement authority and shall include  
21 the following information about the person registering:

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

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

4        3. A photocopy of the driver license of the person; and

5        4. The level assignment of the person.

6        For purposes of this section, "local law enforcement authority"  
7 means:

8            a. the municipal police department, if the person resides  
9            or intends to reside or stay within the jurisdiction  
10           of any municipality of this state, or

11           b. the county sheriff, if the person resides or intends  
12           to reside or stay at any place outside the  
13           jurisdiction of any municipality within this state,  
14           and

15           c. the police or security department of any institution  
16           of higher learning within this state if the person:

17                (1) enrolls as a full-time or part-time student,

18                (2) is a full-time or part-time employee at an  
19                institution of higher learning, or

20                (3) resides or intends to reside or stay on any  
21                property owned or controlled by the institution  
22                of higher learning.

23        D. Any person subject to the provisions of the Sex Offenders  
24 Registration Act who changes address, employment or student

1 enrollment status shall appear in person and give notification to  
2 the Department of Corrections and the local law enforcement  
3 authority of the change of address and the new address, the change  
4 of employment or the change of student enrollment status no later  
5 than three (3) business days prior to the abandonment of or move  
6 from the current address or, in the case of change of employment or  
7 student enrollment, within three (3) business days of such change.  
8 If the new address, employment or student enrollment is under the  
9 jurisdiction of a different local law enforcement authority:

10 1. The Department of Corrections and the local law enforcement  
11 authority shall notify the new local law enforcement authority by  
12 teletype or electronic transmission of the change of address,  
13 employment or student enrollment status;

14 2. The offender shall notify the new local law enforcement  
15 authority of any previous registration; and

16 3. The new local law enforcement authority shall notify the  
17 most recent registering agency by teletype or electronic  
18 transmission of the change in address, employment or student  
19 enrollment status of the offender. If the new address is in another  
20 state the Department of Corrections shall promptly notify the agency  
21 responsible for registration in that state of the new address of the  
22 offender.

23 E. Any person subject to the provisions of the Sex Offenders  
24 Registration Act who is unable to provide an address to the

1 Department of Corrections or local law enforcement authority as  
2 required in subsections A and C of this section and registers as a  
3 transient shall report in person to the nearest local law  
4 enforcement authority every seven (7) days and provide to the local  
5 law enforcement authority the approximate location of where the  
6 person is staying and where the person plans to stay.

7 F. The Department of Corrections shall maintain a file of all  
8 sex offender registrations. A copy of the information contained in  
9 the registration shall promptly be available to state, county and  
10 municipal law enforcement agencies, the State Superintendent of  
11 Public Instruction, the Commissioner of Health, and the National Sex  
12 Offender Registry maintained by the Federal Bureau of Investigation.  
13 The file shall promptly be made available for public inspection or  
14 copying pursuant to rules promulgated by the Department of  
15 Corrections and may be made available through Internet access. The  
16 Department of Corrections shall promptly provide all municipal  
17 police departments, all county sheriff departments and all campus  
18 police departments a list of those sex offenders registered and  
19 living in their county.

20 G. The Superintendent of Public Instruction is authorized to  
21 copy and shall distribute information from the sex offender registry  
22 to school districts and individual public and private schools within  
23 the state with a notice using the following or similar language: "A  
24 person whose name appears on this registry has been convicted of a

1 sex offense. Continuing to employ a person whose name appears on  
2 this registry may result in civil liability for the employer or  
3 criminal prosecution pursuant to Section 589 of Title 57 of the  
4 Oklahoma Statutes."

5 H. The State Commissioner of Health is authorized to distribute  
6 information from the sex offender registry to any nursing home or  
7 long-term care facility. Nothing in this subsection shall be deemed  
8 to impose any liability upon or give rise to a cause of action  
9 against any person, agency, organization, or company for failing to  
10 release information in accordance with the Sex Offenders  
11 Registration Act.

12 I. Each local law enforcement authority shall make its sex  
13 offender registry available upon request, without restriction, at a  
14 cost that is no more than what is charged for other records provided  
15 by the local law enforcement authority pursuant to the Oklahoma Open  
16 Records Act.

17 When a local law enforcement authority sends a copy of or  
18 otherwise makes the sex offender registry available to any public or  
19 private school offering any combination of prekindergarten through  
20 twelfth grade classes or child care facility licensed by the state,  
21 the agency shall provide a notice using the following or similar  
22 language: "A person whose name appears on this registry has been  
23 convicted of a sex offense. Continuing to employ a person whose  
24 name appears on this registry may result in civil liability for the

1 employer or criminal prosecution pursuant to Section 589 of Title 57  
2 of the Oklahoma Statutes."

3 J. Samples of blood or saliva for DNA testing required by  
4 subsection A of this section shall be taken by employees or  
5 contractors of the Department of Corrections. Said individuals  
6 shall be properly trained to collect blood or saliva samples.  
7 Persons collecting samples for DNA testing pursuant to this section  
8 shall be immune from civil liabilities arising from this activity.  
9 The Department of Corrections shall ensure the collection of samples  
10 is mailed to the Oklahoma State Bureau of Investigation (OSBI)  
11 within ten (10) days of the time the subject appears for testing.  
12 The Department shall use sample kits provided by the OSBI and  
13 procedures promulgated by the OSBI. Persons subject to DNA testing  
14 pursuant to this section shall be required to pay to the Department  
15 of Corrections a fee of Fifteen Dollars (\$15.00). Any fees  
16 collected pursuant to this subsection shall be deposited in the  
17 Department of Corrections revolving account.

18 K. 1. Any person who has been convicted of or received a  
19 suspended sentence or any probationary term, including a deferred  
20 sentence imposed in violation of subsection G of Section 991c of  
21 Title 22 of the Oklahoma Statutes, for any crime listed in Section  
22 582 of this title and:

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1 a. who is subsequently convicted of a crime or an attempt  
2 to commit a crime listed in subsection A of Section  
3 582 of this title, or

4 b. who enters this state after November 1, 1997, and who  
5 has been convicted of an additional crime or attempted  
6 crime which, if committed or attempted in this state,  
7 would be a crime or an attempt to commit a crime  
8 provided for in subsection A of Section 582 of this  
9 title,

10 shall be subject to all of the registration requirements of this act  
11 and shall be designated by the Department of Corrections as a  
12 habitual sex offender. A habitual sex offender shall be required to  
13 register for the lifetime of the habitual sex offender.

14 2. On or after November 1, 1999, any person who has been  
15 convicted of a crime or an attempt to commit a crime, received a  
16 suspended sentence or any probationary term, including a deferred  
17 sentence imposed in violation of subsection G of Section 991c of  
18 Title 22 of the Oklahoma Statutes, for a crime provided for in  
19 Section 7115 of Title 10 of the Oklahoma Statutes, if the offense  
20 involved sexual abuse or sexual exploitation as these terms are  
21 defined in Section 7102 of Title 10 of the Oklahoma Statutes,  
22 Section 885, 888, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma  
23 Statutes shall be subject to all the registration requirements of  
24 this act and shall be designated by the Department of Corrections as

1 an aggravated sex offender. An aggravated sex offender shall be  
2 required to register for the lifetime of the aggravated sex  
3 offender.

4 3. Upon registration of any person designated as a habitual or  
5 aggravated sex offender, pursuant to this subsection, a local law  
6 enforcement authority shall notify, by any method of communication  
7 it deems appropriate, anyone that the local law enforcement  
8 authority determines appropriate, including, but not limited to:

- 9 a. the family of the habitual or aggravated sex offender,
- 10 b. any prior victim of the habitual or aggravated sex  
11 offender,
- 12 c. residential neighbors and churches, community parks,  
13 schools, convenience stores, businesses and other  
14 places that children or other potential victims may  
15 frequent, and
- 16 d. a nursing facility, a specialized facility, a  
17 residential care home, a continuum-of-care facility,  
18 an assisted living center, and an adult day care  
19 facility.

20 4. The notification may include, but is not limited to, the  
21 following information:

- 22 a. the name and physical address of the habitual or  
23 aggravated sex offender,

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

5. The local law enforcement authority shall make the notification provided for in this subsection regarding a habitual or aggravated sex offender available to any person upon request.

L. If the probation and parole officer supervising a person subject to registration receives information to the effect that the status of the person has changed in any manner that affects proper

1 supervision of the person including, but not limited to, a change in  
2 the physical health of the person, address, employment, or  
3 educational status, higher educational status, incarceration, or  
4 terms of release, the supervising officer or administrator shall  
5 notify the appropriate local law enforcement authority or  
6 authorities of that change.

7 M. Public officials, public employees, and public agencies are  
8 immune from civil liability for good faith conduct under any  
9 provision of the Sex Offenders Registration Act and the court shall  
10 not order attorney fees against a public official, public employee  
11 or public agency enforcing this act.

12 1. Nothing in the Sex Offenders Registration Act shall be  
13 deemed to impose any liability upon or to give rise to a cause of  
14 action against any public official, public employee, or public  
15 agency for releasing information to the public or for failing to  
16 release information in accordance with the Sex Offenders  
17 Registration Act.

18 2. Nothing in this section shall be construed to prevent law  
19 enforcement officers from notifying members of the public of any  
20 persons that pose a danger under circumstances that are not  
21 enumerated in the Sex Offenders Registration Act.

22 SECTION 3. This act shall become effective November 1, 2010.  
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1 Passed the House of Representatives the 1st day of March, 2010.

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4 Presiding Officer of the House of  
Representatives

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6 Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2010.

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9 Presiding Officer of the Senate