

THE HOUSE OF REPRESENTATIVES
Monday, February 22, 2010

Committee Substitute for
House Bill No. 3379

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3379 - By: TERRILL of the House.

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

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

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

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

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

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

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

6 4. The court shall not consider any pleadings from any intervening parties and
7 shall not stay the Department disciplinary process during the review of the misconduct
8 hearing.

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

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

15 D. The court shall only determine whether due process was provided by the
16 revoking authority. In determining whether due process was provided, the court shall
17 determine:

18 1. Whether written notice of the charge was provided to the inmate;

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

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

1 4. Whether the inmate had the opportunity to present relevant documentary
2 evidence;

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

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

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

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

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

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

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

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

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

6 2. A complete description of the person, including a photograph and fingerprints,
7 and when requested by the Department of Corrections, such registrant shall submit to a
8 blood or saliva test for purposes of a deoxyribonucleic acid (DNA) profile. Submission to
9 testing for individuals registering shall be within thirty (30) days of registration.

10 Registrants who already have valid samples on file in the Oklahoma State Bureau of
11 Investigation (OSBI) DNA Offender Database shall not be required to submit duplicate
12 samples for testing;

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

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

20 5. Where the person previously resided, where the person currently resides, how
21 long the person has resided there, how long the person expects to reside there, and how

1 long the person expects to remain in the county and in this state. The Department of
2 Corrections shall conduct address verification of each registered sex offender as follows:
3 a. on an annual basis, if the numeric risk level of the person is one, or
4 b. on a semiannual basis, if the numeric risk level of the person is two.

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

1 act. A local law enforcement authority designated as the primary registration authority
2 of the person may, at any time, mail a nonforwardable verification form to the last-
3 reported address of the person. The person shall return the verification form in person to
4 the local law enforcement authority that mailed the form within ten (10) days after
5 receipt of the form. The local law enforcement authority shall require the person to
6 produce proof of the identity of the person and current address;

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

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

12 8. The level assignment of the person.

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

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

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

- 1 2. A description of the offense for which the offender was convicted, the date of the
2 conviction, and the sentence imposed, if applicable;
- 3 3. A photocopy of the driver license of the person; and
- 4 4. The level assignment of the person.

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

- 6 a. the municipal police department, if the person resides or intends to
7 reside or stay within the jurisdiction of any municipality of this state,
8 or
- 9 b. the county sheriff, if the person resides or intends to reside or stay at
10 any place outside the jurisdiction of any municipality within this state,
11 and
- 12 c. the police or security department of any institution of higher learning
13 within this state if the person:
- 14 (1) enrolls as a full-time or part-time student,
- 15 (2) is a full-time or part-time employee at an institution of higher
16 learning, or
- 17 (3) resides or intends to reside or stay on any property owned or
18 controlled by the institution of higher learning.

19 D. Any person subject to the provisions of the Sex Offenders Registration Act who
20 changes address, employment or student enrollment status shall appear in person and
21 give notification to the Department of Corrections and the local law enforcement
22 authority of the change of address and the new address, the change of employment or the

1 change of student enrollment status no later than three (3) business days prior to the
2 abandonment of or move from the current address or, in the case of change of
3 employment or student enrollment, within three (3) business days of such change. If the
4 new address, employment or student enrollment is under the jurisdiction of a different
5 local law enforcement authority:

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

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

11 3. The new local law enforcement authority shall notify the most recent registering
12 agency by teletype or electronic transmission of the change in address, employment or
13 student enrollment status of the offender. If the new address is in another state the
14 Department of Corrections shall promptly notify the agency responsible for registration
15 in that state of the new address of the offender.

16 E. Any person subject to the provisions of the Sex Offenders Registration Act who is
17 unable to provide an address to the Department of Corrections or local law enforcement
18 authority as required in subsections A and C of this section and registers as a transient
19 shall report in person to the nearest local law enforcement authority every seven (7) days
20 and provide to the local law enforcement authority the approximate location of where the
21 person is staying and where the person plans to stay.

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

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

11 G. The Superintendent of Public Instruction is authorized to copy and shall
12 distribute information from the sex offender registry to school districts and individual
13 public and private schools within the state with a notice using the following or similar
14 language: “A person whose name appears on this registry has been convicted of a sex
15 offense. Continuing to employ a person whose name appears on this registry may result
16 in civil liability for the employer or criminal prosecution pursuant to Section 589 of Title
17 57 of the Oklahoma Statutes.”

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

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

5 When a local law enforcement authority sends a copy of or otherwise makes the sex
6 offender registry available to any public or private school offering any combination of
7 prekindergarten through twelfth grade classes or child care facility licensed by the state,
8 the agency shall provide a notice using the following or similar language: “A person
9 whose name appears on this registry has been convicted of a sex offense. Continuing to
10 employ a person whose name appears on this registry may result in civil liability for the
11 employer or criminal prosecution pursuant to Section 589 of Title 57 of the Oklahoma
12 Statutes.”

13 J. Samples of blood or saliva for DNA testing required by subsection A of this
14 section shall be taken by employees or contractors of the Department of Corrections.
15 Said individuals shall be properly trained to collect blood or saliva samples. Persons
16 collecting samples for DNA testing pursuant to this section shall be immune from civil
17 liabilities arising from this activity. The Department of Corrections shall ensure the
18 collection of samples is mailed to the Oklahoma State Bureau of Investigation (OSBI)
19 within ten (10) days of the time the subject appears for testing. The Department shall
20 use sample kits provided by the OSBI and procedures promulgated by the OSBI.
21 Persons subject to DNA testing pursuant to this section shall be required to pay to the

1 Department of Corrections a fee of Fifteen Dollars (\$15.00). Any fees collected pursuant
2 to this subsection shall be deposited in the Department of Corrections revolving account.

3 K. 1. Any person who has been convicted of or received a suspended sentence or
4 any probationary term, including a deferred sentence imposed in violation of subsection
5 G of Section 991c of Title 22 of the Oklahoma Statutes, for any crime listed in Section
6 582 of this title and:

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

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

14 shall be subject to all of the registration requirements of this act and shall be designated
15 by the Department of Corrections as a habitual sex offender. A habitual sex offender
16 shall be required to register for the lifetime of the habitual sex offender.

17 2. On or after November 1, 1999, any person who has been convicted of a crime or
18 an attempt to commit a crime, received a suspended sentence or any probationary term,
19 including a deferred sentence imposed in violation of subsection G of Section 991c of Title
20 22 of the Oklahoma Statutes, for a crime provided for in Section 7115 of Title 10 of the
21 Oklahoma Statutes, if the offense involved sexual abuse or sexual exploitation as these
22 terms are defined in Section 7102 of Title 10 of the Oklahoma Statutes, Section 885, 888,

1 1111.1, 1114 or 1123 of Title 21 of the Oklahoma Statutes shall be subject to all the
2 registration requirements of this act and shall be designated by the Department of
3 Corrections as an aggravated sex offender. An aggravated sex offender shall be required
4 to register for the lifetime of the aggravated sex offender.

5 3. Upon registration of any person designated as a habitual or aggravated sex
6 offender, pursuant to this subsection, a local law enforcement authority shall notify, by
7 any method of communication it deems appropriate, anyone that the local law
8 enforcement 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 offender,
- 11 c. residential neighbors and churches, community parks, schools,
12 convenience stores, businesses and other places that children or other
13 potential victims may frequent, and
- 14 d. a nursing facility, a specialized facility, a residential care home, a
15 continuum-of-care facility, an assisted living center, and an adult day
16 care facility.

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

- 18 a. the name and physical address of the habitual or aggravated sex
19 offender,
- 20 b. a physical description of the habitual or aggravated sex offender,
21 including, but not limited to, age, height, weight and eye and hair
22 color,

- 1 c. a description of the vehicle that the habitual or aggravated sex
2 offender is known to drive,
3 d. any conditions or restrictions upon the probation, parole or conditional
4 release of the habitual or aggravated sex offender,
5 e. a description of the primary and secondary targets of the habitual or
6 aggravated sex offender,
7 f. a description of the method of offense of the habitual or aggravated sex
8 offender,
9 g. a current photograph of the habitual or aggravated sex offender,
10 h. the name and telephone number of the probation or parole officer of
11 the habitual or aggravated sex offender, and
12 i. the level assignment of the person.

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

16 L. If the probation and parole officer supervising a person subject to registration
17 receives information to the effect that the status of the person has changed in any
18 manner that affects proper supervision of the person including, but not limited to, a
19 change in the physical health of the person, address, employment, or educational status,
20 higher educational status, incarceration, or terms of release, the supervising officer or
21 administrator shall notify the appropriate local law enforcement authority or authorities
22 of that change.

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

5 1. Nothing in the Sex Offenders Registration Act shall be deemed to impose any
6 liability upon or to give rise to a cause of action against any public official, public
7 employee, or public agency for releasing information to the public or for failing to release
8 information in accordance with the Sex Offenders Registration Act.

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

12 SECTION 3. This act shall become effective November 1, 2010.

13 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC SAFETY, dated 02-18-10 - DO
14 PASS, As Amended.