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THE STATE SENATE
Monday, March 29, 2010

ENGROSSED
House Bill No. 3379
As Amended

ENGROSSED HOUSE BILL NO. 3379 - By: Terrill of the House and Sykes of the Senate.

[prisons and reformatories - Oklahoma Correctional Act of 1967 - clarifying notice requirement - Sex Offenders Registration Act - prohibiting courts from ordering attorney fees - effective date]

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

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

Section 564.1 A. In those instances of prison disciplinary proceedings that result in the revocation of earned credits, the 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. The petition shall be filed within ninety (90) days of the date the petitioner is notified of the final Department of Corrections decision in the Department disciplinary appeal process.

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

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

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

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

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

18 D. The court shall only determine whether due process was
19 provided by the revoking authority. In determining whether due
20 process was provided, the court shall determine:

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

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

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

5 4. Whether the inmate had the opportunity to present relevant
6 documentary evidence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 The Department of Corrections shall mail a nonforwardable
21 verification form to the last-reported address of the person. The
22 person shall return the verification form in person to the local law
23 enforcement authority of that jurisdiction within ten (10) days

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

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

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

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

8 4. The level assignment of the person.

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

11 a. the municipal police department, if the person resides
12 or intends to reside or stay within the jurisdiction
13 of any municipality of this state, or

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

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

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

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

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

4 D. Any person subject to the provisions of the Sex Offenders
5 Registration Act who changes address, employment or student
6 enrollment status shall appear in person and give notification to
7 the Department of Corrections and the local law enforcement
8 authority of the change of address and the new address, the change
9 of employment or the change of student enrollment status no later
10 than three (3) business days prior to the abandonment of or move
11 from the current address or, in the case of change of employment or
12 student enrollment, within three (3) business days of such change.
13 If the new address, employment or student enrollment is under the
14 jurisdiction of a different local law enforcement authority:

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

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

21 3. The new local law enforcement authority shall notify the
22 most recent registering agency by teletype or electronic
23 transmission of the change in address, employment or student

1 enrollment status of the offender. If the new address is in another
2 state the Department of Corrections shall promptly notify the agency
3 responsible for registration in that state of the new address of the
4 offender.

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

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

1 police departments a list of those sex offenders registered and
2 living in their county.

3 G. The Superintendent of Public Instruction is authorized to
4 copy and shall distribute information from the sex offender registry
5 to school districts and individual public and private schools within
6 the state with a notice using the following or similar language: "A
7 person whose name appears on this registry has been convicted of a
8 sex offense. Continuing to employ a person whose name appears on
9 this registry may result in civil liability for the employer or
10 criminal prosecution pursuant to Section 589 of Title 57 of the
11 Oklahoma Statutes."

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

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

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

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

1 collected pursuant to this subsection shall be deposited in the
2 Department of Corrections revolving account.

3 K. 1. Any person who has been convicted of or received a
4 suspended sentence or any probationary term, including a deferred
5 sentence imposed in violation of subsection G of Section 991c of
6 Title 22 of the Oklahoma Statutes, for any crime listed in Section
7 582 of this title and:

8 a. who is subsequently convicted of a crime or an attempt
9 to commit a crime listed in subsection A of Section
10 582 of this title, or

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

17 shall be subject to all of the registration requirements of this act
18 and shall be designated by the Department of Corrections as a
19 habitual sex offender. A habitual sex offender shall be required to
20 register for the lifetime of the habitual sex offender.

21 2. On or after November 1, 1999, any person who has been
22 convicted of a crime or an attempt to commit a crime, received a
23 suspended sentence or any probationary term, including a deferred

1 sentence imposed in violation of subsection G of Section 991c of
2 Title 22 of the Oklahoma Statutes, for a crime provided for in
3 Section 7115 of Title 10 of the Oklahoma Statutes, if the offense
4 involved sexual abuse or sexual exploitation as these terms are
5 defined in Section 7102 of Title 10 of the Oklahoma Statutes,
6 Section 885, 888, 1111.1, 1114 or 1123 of Title 21 of the Oklahoma
7 Statutes shall be subject to all the registration requirements of
8 this act and shall be designated by the Department of Corrections as
9 an aggravated sex offender. An aggravated sex offender shall be
10 required to register for the lifetime of the aggravated sex
11 offender.

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

- 17 a. the family of the habitual or aggravated sex offender,
18 b. any prior victim of the habitual or aggravated sex
19 offender,
20 c. residential neighbors and churches, community parks,
21 schools, convenience stores, businesses and other
22 places that children or other potential victims may
23 frequent, and

1 d. a nursing facility, a specialized facility, a
2 residential care home, a continuum-of-care facility,
3 an assisted living center, and an adult day care
4 facility.

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

- 7 a. the name and physical address of the habitual or
8 aggravated sex offender,
9 b. a physical description of the habitual or aggravated
10 sex offender, including, but not limited to, age,
11 height, weight and eye and hair color,
12 c. a description of the vehicle that the habitual or
13 aggravated sex offender is known to drive,
14 d. any conditions or restrictions upon the probation,
15 parole or conditional release of the habitual or
16 aggravated sex offender,
17 e. a description of the primary and secondary targets of
18 the habitual or aggravated sex offender,
19 f. a description of the method of offense of the habitual
20 or aggravated sex offender,
21 g. a current photograph of the habitual or aggravated sex
22 offender,

1 h. the name and telephone number of the probation or
2 parole officer of the habitual or aggravated sex
3 offender, and

4 i. the level assignment of the person.

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

8 L. If the probation and parole officer supervising a person
9 subject to registration receives information to the effect that the
10 status of the person has changed in any manner that affects proper
11 supervision of the person including, but not limited to, a change in
12 the physical health of the person, address, employment, or
13 educational status, higher educational status, incarceration, or
14 terms of release, the supervising officer or administrator shall
15 notify the appropriate local law enforcement authority or
16 authorities of that change.

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

22 1. Nothing in the Sex Offenders Registration Act shall be
23 deemed to impose any liability upon or to give rise to a cause of

1 action against any public official, public employee, or public
2 agency for releasing information to the public or for failing to
3 release information in accordance with the Sex Offenders
4 Registration Act.

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

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

10 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-24-10 - DO
11 PASS, As Amended.