

STATE OF OKLAHOMA

2nd Session of the 52nd Legislature (2010)

HOUSE BILL 2273

By: Trebilcock

AS INTRODUCED

An Act relating to sexually violent predators; 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

1 certain agency to provide treatment services;  
2 requiring notice prior to release of committed  
3 persons; providing for the release of certain  
4 records; requiring certain records be sealed;  
5 establishing process for designating crime as  
6 sexually motivated; providing for codification; and  
7 declaring an emergency.

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

9 SECTION 1. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 14-101 of Title 43A, unless  
11 there is created a duplication in numbering, reads as follows:

12 As used in this act:

13 1. "Agency with jurisdiction" means that agency with the  
14 authority to direct the release of a person serving a sentence or  
15 term of confinement and includes the Department of Corrections, the  
16 Pardon and Parole Board and the Department of Mental Health and  
17 Substance Abuse Services;

18 2. "Commissioner" means the Commissioner of the Department of  
19 Mental Health and Substance Abuse Services;

20 3. "Likely to engage in repeat act of sexual violence" means  
21 the propensity of the person to commit acts of sexual violence is of  
22 such a degree as to pose a menace to the health and safety of  
23 others;

24 4. "Mental abnormality" means a congenital or acquired  
condition affecting the emotional or volitional capacity which

1 predisposes the person to commit sexually violent offenses in a  
2 degree constituting such person a menace to the health and safety of  
3 others;

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

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

9 7. "Sexually violent offense" means:

10 a. rape, pursuant to Section 1114 of Title 21 of the  
11 Oklahoma Statutes,

12 b. rape by instrumentation, pursuant to Section 1111.1 of  
13 Title 21 of the Oklahoma Statutes,

14 c. lewd, indecent proposals or acts against a child under  
15 sixteen (16) years of age, pursuant to Section 1123 of  
16 Title 21 of the Oklahoma Statutes,

17 d. incest, pursuant to Section 885 of Title 21 of the  
18 Oklahoma Statutes,

19 e. sodomy, pursuant to Section 886 of Title 21 of the  
20 Oklahoma Statutes,

21 f. solicitation of a minor, pursuant to subsection B of  
22 Section 1021 of Title 21 of the Oklahoma Statutes,  
23  
24

- g. procuring a minor to participate in pornography,  
pursuant to Sections 1021.2 and 1021.3 of Title 21 of  
the Oklahoma Statutes,
- h. forcible sodomy, pursuant to Section 888 of Title 21  
of the Oklahoma Statutes,
- i. 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 h 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,
- j. an attempt, conspiracy or criminal solicitation to  
commit a sexually violent offense as defined in this  
paragraph, or
- k. 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  
by clear and convincing evidence 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;

1        9. "Transitional release" means any halfway house, work  
2 release, sexually violent predator treatment facility, or other  
3 placement designed to assist in the adjustment and reintegration of  
4 the person into the community once released from commitment; and

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

9        SECTION 2.        NEW LAW        A new section of law to be codified  
10 in the Oklahoma Statutes as Section 14-102 of Title 43A, unless  
11 there is created a duplication in numbering, reads as follows:

12        A. When it appears that a person may meet the criteria of a  
13 sexually violent predator, as defined in Section 1 of this act, the  
14 agency with jurisdiction shall give written notice of such to the  
15 Attorney General and the multidisciplinary team established in  
16 subsection D of this section, ninety (90) days prior to:

17        1. The anticipated release from total confinement of a person  
18 who has been convicted of a sexually violent offense;

19        2. Release of a person who has been charged with a sexually  
20 violent offense and who has been determined to be incompetent to  
21 stand trial; or

22        3. Release of a person who has been found not guilty by reason  
23 of insanity of a sexually violent offense.  
24

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

4       1. The name of the person, identifying factors, anticipated  
5 future residence and offense history; and

6       2. Documentation of institutional adjustment and any treatment  
7 received.

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

15       D. The Director of the Department of Corrections shall  
16 establish a multidisciplinary team which may include individuals  
17 from other state agencies to review available records of each person  
18 referred to such team pursuant to subsection A of this section. The  
19 team, within thirty (30) days of receiving notice, shall assess  
20 whether or not the person meets the definition of a sexually violent  
21 predator, as defined in Section 1 of this act. The  
22 multidisciplinary team shall notify the Attorney General of its  
23 assessment.  
24

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

9 F. The provisions of this section are not jurisdictional, and  
10 failure to comply with such provisions in no way prevents the  
11 Attorney General from proceeding against a person otherwise subject  
12 to the provisions of this act.

13 SECTION 3. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 14-103 of Title 43A, unless  
15 there is created a duplication in numbering, reads as follows:

16 A. When it appears that a person presently confined may be a  
17 sexually violent predator and the prosecutor's review committee has  
18 determined that the person meets the definition of a sexually  
19 violent predator, the Attorney General, within seventy-five (75)  
20 days of the date the Attorney General received the written notice by  
21 the agency of jurisdiction as provided in Section 2 of this act, may  
22 file a petition in the county where the person was convicted or  
23 charged with a sexually violent offense alleging that the person is  
24

1 a sexually violent predator and stating sufficient facts to support  
2 such allegation.

3 B. The provisions of this section are not jurisdictional, and  
4 failure to comply with such provisions in no way prevents the  
5 Attorney General from proceeding against a person otherwise subject  
6 to the provisions of this act.

7 SECTION 4. NEW LAW A new section of law to be codified  
8 in the Oklahoma Statutes as Section 14-104 of Title 43A, unless  
9 there is created a duplication in numbering, reads as follows:

10 A. Upon the filing of a petition under Section 3 of this act, a  
11 judge shall determine whether probable cause exists to believe that  
12 the person named in the petition is a sexually violent predator. If  
13 such determination is made, the judge shall direct that person be  
14 taken into custody.

15 B. Within seventy-two (72) hours after a person is taken into  
16 custody, the person shall be provided with notice of, and an  
17 opportunity to appear in person at, a hearing to contest probable  
18 cause as to whether the person is a sexually violent predator. At  
19 the hearing, the court shall:

20 1. Verify the identity of the person; and

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

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



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

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

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

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

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

10 E. If, at the conclusion of the hearing, a probable cause  
11 determination is made, the court shall direct that the person be  
12 transferred to an appropriate secure facility including, but not  
13 limited to, a county jail for an evaluation as to whether the person  
14 is a sexually violent predator. The evaluation shall be conducted  
15 by a person deemed to be professionally qualified to conduct such an  
16 examination.

17 SECTION 5. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 14-105 of Title 43A, unless  
19 there is created a duplication in numbering, reads as follows:

20 A. Within sixty (60) days after the completion of the probable  
21 cause hearing pursuant to Section 4 of this act, the court shall  
22 conduct a trial to determine whether the person is a sexually  
23 violent predator. The trial may be continued upon the request of  
24 either party and a showing of good cause, or by the court on its own

1 motion in the due administration of justice, and when the respondent  
2 will not be substantially prejudiced. At all stages of the  
3 proceedings under this act, any person subject to this act shall be  
4 entitled to the assistance of counsel, and if the person is  
5 indigent, the court shall appoint counsel to assist the person.  
6 Whenever any person is subjected to an examination under this act,  
7 the person may retain experts or professional persons to perform an  
8 examination on behalf of that person. When the person wishes to be  
9 examined by a qualified expert or professional person chosen by that  
10 person, such examiner shall be permitted to have reasonable access  
11 to the person for the purpose of such examination, as well as to all  
12 relevant medical and psychological records and reports. In the case  
13 of a person who is indigent, the court, upon the request of the  
14 person, shall determine whether the services are necessary and  
15 reasonable compensation for such services. If the court determines  
16 that the services are necessary and the requested compensation for  
17 such services of the expert or professional person is reasonable,  
18 the court shall assist the person in obtaining an expert or  
19 professional person to perform an examination or participate in the  
20 trial on behalf of the person. The court shall approve payment for  
21 such services upon the filing of a certified claim for compensation  
22 supported by a written statement specifying the time expended,  
23 services rendered, expenses incurred on behalf of the person and  
24

1 compensation received in the same case or for the same services from  
2 any other source.

3 B. The person, the Attorney General, or the judge shall have  
4 the right to demand that the trial be before a jury. Such demand  
5 for the trial to be before a jury shall be filed, in writing, at  
6 least four (4) days prior to trial. The jury shall be composed of  
7 six (6) persons having the qualifications of jurors in courts of  
8 record. If no demand is made, the trial shall be before the court.

9 SECTION 6. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 14-106 of Title 43A, unless  
11 there is created a duplication in numbering, reads as follows:

12 A. The court or jury shall determine whether, by clear and  
13 convincing evidence, the person is a sexually violent predator. If  
14 the determination that the person is a sexually violent predator is  
15 made by a jury, the determination shall be by unanimous verdict of  
16 the jury. The verdict or court decision may be appealed. If the  
17 court or jury determines that the person is a sexually violent  
18 predator, the person shall be committed to the custody of the  
19 Department of Mental Health and Substance Abuse Services for  
20 control, care and treatment until such time as the mental  
21 abnormality or personality disorder of the person has so changed  
22 that the person is safe to be at large. Such control, care and  
23 treatment shall be provided at a facility operated by the Department  
24 of Mental Health and Substance Abuse Services. If the court or jury

1 is not satisfied by clear and convincing evidence that the person is  
2 a sexually violent predator, the court shall direct the release of  
3 the person.

4 B. At all times, persons committed for control, care and  
5 treatment by the Department of Mental Health and Substance Abuse  
6 Services pursuant to this act shall be kept in a secure facility and  
7 such persons shall be segregated at all times from any other patient  
8 under the supervision of the Department of Mental Health and  
9 Substance Abuse Services.

10 C. The Department of Mental Health and Substance Abuse Services  
11 is authorized to enter into an interagency agreement with the  
12 Department of Corrections for the confinement of such persons. Such  
13 persons who are in the confinement of the Department of Corrections  
14 pursuant to an interagency agreement shall be housed and managed  
15 separately from offenders in the custody of the Department of  
16 Corrections and, except for occasional instances of supervised  
17 incidental contact, shall be segregated from such offenders.

18 D. If any person while committed to the custody of the  
19 Department of Mental Health and Substance Abuse Services shall be  
20 taken into custody by any law enforcement officer pursuant to any  
21 parole revocation proceeding or any arrest or conviction for a  
22 criminal offense of any nature, upon the person's release from the  
23 custody of any law enforcement officer, the person shall be returned  
24 to the custody of the Department of Mental Health and Substance

1 Abuse Services for further treatment pursuant to this act. During  
2 any such period of time a person is not in the actual custody or  
3 supervision of the Department of Mental Health and Substance Abuse  
4 Services, the Department of Mental Health and Substance Abuse  
5 Services shall be excused from the provisions of Section 7 of this  
6 act, with regard to providing that person an annual examination,  
7 annual notice and annual report to the court, except that the  
8 Department of Mental Health and Substance Abuse Services shall give  
9 notice to the court as soon as reasonably possible after the taking  
10 of the person into custody that the person is no longer in treatment  
11 pursuant to this act, and notice to the court when the person is  
12 returned to the custody of the Department of Mental Health and  
13 Substance Abuse Services for further treatment.

14 E. Upon a mistrial, the court shall direct that the person be  
15 held at an appropriate secure facility including, but not limited  
16 to, a county jail, until another trial is conducted. Any subsequent  
17 trial following a mistrial shall be held within ninety (90) days of  
18 the previous trial.

19 F. If the person charged with a sexually violent offense has  
20 been found incompetent to stand trial, is about to be released from  
21 the custody of the state and commitment of the person is sought  
22 pursuant to this act, the court shall first hear evidence and  
23 determine whether the person did commit the act or acts charged.  
24 The rules of evidence applicable in criminal cases shall apply, and

1 all constitutional rights available to defendants at criminal  
2 trials, other than the right not to be tried while incompetent,  
3 shall apply. After hearing evidence on this issue, the court shall  
4 make specific findings on the following:

5 1. Whether the person did commit the act or acts charged;

6 2. The extent to which the incompetence or developmental  
7 disability of the person affected the outcome of the hearing,  
8 including its effect on the ability of the person to consult with  
9 and assist counsel and to testify on his or her own behalf;

10 3. The extent to which the evidence could be reconstructed  
11 without the assistance of the person; and

12 4. The strength of the evidence presented by the state.

13 G. If, after the conclusion of the hearing on this issue, the  
14 court finds by clear and convincing evidence that the person did  
15 commit the act or acts charged, the court shall enter a final order,  
16 appealable by the person, on that issue and may proceed to consider  
17 whether the person should be committed pursuant to the provisions of  
18 this section.

19 SECTION 7. NEW LAW A new section of law to be codified  
20 in the Oklahoma Statutes as Section 14-107 of Title 43A, unless  
21 there is created a duplication in numbering, reads as follows:

22 A. Each person committed under this act shall have a current  
23 examination of the mental condition of the person made once every  
24 year. The Commissioner of the Department of Mental Health and

1 Substance Abuse Services shall provide the committed person with an  
2 annual written notice of the right of the person to petition the  
3 court for release over the objection of the Commissioner. The  
4 notice shall contain a waiver of rights. The Commissioner shall  
5 forward the notice and waiver form to the court with the annual  
6 report. The person may retain or, if the person is indigent and so  
7 requests, the court may appoint a qualified professional person to  
8 examine the person, and such expert or professional person shall  
9 have access to all records concerning the person. The yearly report  
10 shall be provided to the court that committed the person under this  
11 act. The court shall conduct an annual review of the status of the  
12 committed person. Nothing contained in this act shall prohibit the  
13 person from otherwise petitioning the court for discharge at this  
14 hearing. The committed person shall have a right to have an  
15 attorney represent the person at the hearing.

16 B. If the court, at the hearing, determines that probable cause  
17 exists to believe that the mental abnormality or personality  
18 disorder of the person has so changed that the person is safe to be  
19 in transitional release, then the court shall set a hearing on the  
20 issue. The court may order and hold a hearing when there is no  
21 current evidence from an expert or professional person that an  
22 identified psychological change to the committed person, such as  
23 paralysis, stroke or dementia, that renders the committed person  
24 unable to commit a sexually violent offense and that this change is

1 permanent and that the evidence presents a change in condition since  
2 the last hearing. At the hearing, the committed person shall be  
3 entitled to be present and entitled to the benefit of all  
4 constitutional protections that were afforded the person at the  
5 initial commitment proceeding. The Attorney General shall represent  
6 the state and shall have a right to a jury trial and to have the  
7 committed person evaluated by experts chosen by the state. The  
8 committed person shall also have the right to have experts evaluate  
9 the person on his or her behalf, and the court shall appoint an  
10 expert if the person is indigent and requests an appointment. The  
11 burden of proof at the hearing shall be upon the state to prove by  
12 clear and convincing evidence that the mental abnormality or  
13 personality disorder of the committed person remains such that the  
14 person is not safe to be placed in transitional release, and if  
15 transitionally released, is likely to engage in acts of sexual  
16 violence.

17 C. If, upon conclusion of the hearing, the court or jury is  
18 convinced by clear and convincing evidence that the person is not  
19 appropriate for transitional release, the court shall order that the  
20 person remain in secure commitment. If the court or jury determines  
21 otherwise, the court shall order that the person be placed in  
22 transitional release.

23 D. If the court determines that the person should be placed in  
24 transitional release, the Commissioner of the Department of Mental



1 Health and Substance Abuse Services shall transfer the person to the  
2 transitional release program. The Commissioner may contract for  
3 services to be provided in the transitional release program. During  
4 any period the person is in transitional release, that person shall  
5 comply with any rules or regulations the Commissioner may establish  
6 for the program and every directive of the treatment staff of the  
7 transitional release program.

8 E. At any time during which the person is in the transitional  
9 release program and the treatment staff determines that the person  
10 has violated any rule, regulation or directive associated with the  
11 transitional release program, the treatment staff may remove the  
12 person from the transitional release program and return the person  
13 to the secure commitment facility, or may request the district court  
14 to issue an emergency ex parte order directing any law enforcement  
15 officer to take the person into custody and return the person to the  
16 secure commitment facility. Any such request may be made verbally  
17 or by telephone, but shall be followed in written or facsimile form  
18 delivered to the court by not later than 5:00 p.m. of the first day  
19 the district court is open for the transaction of business after the  
20 verbal or telephonic request was made.

21 F. Upon the person being returned to the secure commitment  
22 facility from the transitional release program, notice shall be  
23 given by the Commissioner of the Department of Mental Health and  
24 Substance Abuse Services to the court. The court shall set the

1 matter for a hearing within two (2) working days of receipt of  
2 notice of the person having been returned to the secure commitment  
3 facility and cause notice thereof to be given to the Attorney  
4 General, the person and the Commissioner. The state shall have the  
5 burden of proof to show probable cause that the person violated  
6 conditions of transitional release. The hearing shall be to the  
7 court. At the conclusion of the hearing, the court shall issue an  
8 order returning the person to the secure commitment facility or to  
9 the transitional release program, and may order such other further  
10 conditions with which the person must comply if the person is  
11 returned to the transitional release program.

12 SECTION 8. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 14-108 of Title 43A, unless  
14 there is created a duplication in numbering, reads as follows:

15 A. If the Commissioner of the Department of Mental Health and  
16 Substance Abuse Services determines that the mental abnormality or  
17 personality disorder of a person has so changed that the person is  
18 not likely to engage in repeat acts of sexual violence if placed in  
19 transitional release, the Commissioner shall authorize the person to  
20 petition the court for transitional release. The petition shall be  
21 served upon the court and the Attorney General. The court, upon  
22 receipt of the petition for transitional release, shall order a  
23 hearing within thirty (30) days. The Attorney General shall  
24 represent the state and shall have the right to have the petitioner

1 examined by an expert or professional person chosen by the Attorney  
2 General. The hearing shall be before a jury if demanded by the  
3 petitioner or Attorney General. The burden of proof shall be upon  
4 the Attorney General to show by clear and convincing evidence that  
5 the mental abnormality or personality disorder of the petitioner  
6 remains such that the petitioner is not safe to be at large and, if  
7 placed in transitional release, is likely to engage in repeat acts  
8 of sexual violence.

9 B. If, upon conclusion of the hearing, the court is convinced  
10 by clear and convincing evidence that the person is not appropriate  
11 for transitional release, the court shall order that the person  
12 remain in secure commitment. Otherwise, the court shall order that  
13 the person be placed in transitional release.

14 SECTION 9. NEW LAW A new section of law to be codified  
15 in the Oklahoma Statutes as Section 14-109 of Title 43A, unless  
16 there is created a duplication in numbering, reads as follows:

17 A. During any period the person is in transitional release, the  
18 person, at least once every year and at any other time deemed  
19 appropriate by the treatment staff, shall be examined by the  
20 treatment staff to determine if the mental abnormality or  
21 personality disorder of the person has so changed as to warrant such  
22 person being considered for conditional release. The treatment  
23 staff shall forward a report of the examination to the court. The  
24 court shall review the report of the examination. If the court

1 determines that probable cause exists to believe that the mental  
2 abnormality or personality disorder of the person has so changed  
3 that the person is safe to be placed in conditional release, the  
4 court shall then set a hearing on the issue. The burden of proof at  
5 the hearing shall be upon the state to prove by clear and convincing  
6 evidence that the mental abnormality or personality disorder of the  
7 person remains such that the person is not safe to be at large and  
8 that if placed on conditional release is likely to engage in repeat  
9 acts of sexual violence. At the hearing, the person shall be  
10 entitled to be present and entitled to the benefit of all  
11 constitutional protections that were afforded the person at the  
12 initial commitment proceeding. Subsequent to either a court review  
13 or a hearing, the court shall issue an appropriate order with  
14 findings of fact. The order of the court shall be provided to the  
15 Attorney General, the person, and the Commissioner of the Department  
16 of Mental Health and Substance Abuse Services.

17 B. If, after the hearing, the court is convinced by clear and  
18 convincing evidence that the person is not appropriate for  
19 conditional release, the court shall order that the person remain  
20 either in secure commitment or in transitional release. Otherwise,  
21 the court shall order that the person be placed on conditional  
22 release.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14-110 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

1 or personality disorder of the person has changed so as to warrant  
2 the person being considered for final discharge. The person  
3 preparing the report shall forward the report to the court. The  
4 court shall review the report. If the court determines that  
5 probable cause exists to believe that the mental abnormality or  
6 personality disorder of the person has so changed that the person is  
7 safe to be entitled to final discharge, the court shall set a formal  
8 hearing on the issue. The burden of proof at the hearing shall be  
9 upon the state to prove by clear and convincing evidence that the  
10 mental abnormality or personality disorder of the person remains  
11 such that the person is not appropriate for final discharge. At the  
12 hearing, the person shall be entitled to be present and entitled to  
13 the benefit of all constitutional protections that were afforded the  
14 person at the initial commitment proceeding. Subsequent to either a  
15 court review or a hearing, the court shall issue an appropriate  
16 order with findings of fact. The order of the court shall be  
17 provided to the Attorney General, the person and the Commissioner of  
18 the Department of Mental Health and Substance Abuse Services.

19 C. If, after a hearing, the court is convinced by clear and  
20 convincing evidence that the person is not appropriate for final  
21 discharge, the court shall continue custody of the person with the  
22 Commissioner for placement in a secure facility, transitional  
23 release program or conditional release program. Otherwise, the  
24 court shall order the person finally discharged. In the event the

1 court does not order final discharge of the person, the person shall  
2 retain the right to annual review.

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

15 E. Upon the person being returned to a secure commitment  
16 facility from conditional release, notice shall be given by the  
17 Commissioner to the court. The court shall set the matter for a  
18 hearing within two (2) business days of receipt of notice of the  
19 person having been returned to the secure commitment facility. The  
20 court shall provide notice to the Attorney General, the person and  
21 the Commissioner. The burden of proof shall be upon the state to  
22 show probable cause that the person violated the conditions of  
23 conditional release. At the conclusion of the hearing, the court  
24 shall issue an order returning the person to the secure commitment

1 facility, the transitional release program, or to conditional  
2 release. The court may order such other further conditions with  
3 which the person shall comply if the person is returned to either  
4 the transitional release program or to conditional release.

5 F. The final discharge shall not prevent the person from being  
6 prosecuted for any criminal acts which the person is alleged to have  
7 committed or from being subject in the future to a subsequent  
8 commitment under the provisions of this act.

9 SECTION 11. NEW LAW A new section of law to be codified  
10 in the Oklahoma Statutes as Section 14-111 of Title 43A, unless  
11 there is created a duplication in numbering, reads as follows:

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

17 SECTION 12. NEW LAW A new section of law to be codified  
18 in the Oklahoma Statutes as Section 14-112 of Title 43A, unless  
19 there is created a duplication in numbering, reads as follows:

20 The involuntary detention or commitment of persons under this  
21 act shall conform to constitutional requirements for care and  
22 treatment.

23

24



1       SECTION 13.       NEW LAW       A new section of law to be codified  
2 in the Oklahoma Statutes as Section 14-113 of Title 43A, unless  
3 there is created a duplication in numbering, reads as follows:

4       Nothing in this act shall prohibit a person from filing a  
5 petition for transitional release, conditional release or final  
6 discharge pursuant to this act. However, if a person has previously  
7 filed a petition for transitional release, conditional release or  
8 final discharge without the approval of the Commissioner of the  
9 Department of Mental Health and Substance Abuse Services and the  
10 court determined, either upon review of the petition or following a  
11 hearing, that the petition was frivolous or that the condition of  
12 the petitioner had not so changed that the person was safe to be at  
13 large, then the court shall deny the subsequent petition unless the  
14 petition contains facts upon which a court could find the condition  
15 of the petitioner has so changed that a hearing was warranted. Upon  
16 receipt of a first or subsequent petition from the committed person  
17 without the approval of the Commissioner, the court shall endeavor  
18 whenever possible to review the petition and determine if the  
19 petition is based upon frivolous grounds and, if so, shall deny the  
20 petition without a hearing.

21       SECTION 14.       NEW LAW       A new section of law to be codified  
22 in the Oklahoma Statutes as Section 14-114 of Title 43A, unless  
23 there is created a duplication in numbering, reads as follows:

1       A. The Commissioner of the Department of Mental Health and  
2 Substance Abuse Services shall be responsible for all costs relating  
3 to the evaluation and treatment of persons committed to the custody  
4 of the Commissioner under any provision of this act. Reimbursement  
5 may be obtained by the Commissioner for the cost of care and  
6 treatment of persons committed to the custody of the Commissioner.

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

11       SECTION 15.       NEW LAW       A new section of law to be codified  
12 in the Oklahoma Statutes as Section 14-115 of Title 43A, unless  
13 there is created a duplication in numbering, reads as follows:

14       In addition to any other information required to be released  
15 under this act and prior to the release of a person committed under  
16 this act, the Commissioner of the Department of Mental Health and  
17 Substance Abuse Services shall give written notice of such release  
18 to any victim of the crime for which the person was convicted who is  
19 alive and whose address is known to the Commissioner or, if the  
20 victim is deceased, to the family of the victim, if the address of  
21 the family is known to the Commissioner. Failure to notify shall  
22 not be a reason for postponement of release. Nothing in this  
23 section shall create a cause of action against the state or an  
24

1 employee of the state acting within the scope of employment as a  
2 result of the failure to notify as required in this section.

3 SECTION 16. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 14-116 of Title 43A, unless  
5 there is created a duplication in numbering, reads as follows:

6 In order to protect the public, relevant information and records  
7 which are otherwise confidential or privileged shall be released to  
8 the agency with jurisdiction or the Attorney General for the purpose  
9 of meeting the notice requirement, as provided in Section 2 of this  
10 act, and determining whether a person is or continues to be a  
11 sexually violent predator.

12 SECTION 17. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 14-117 of Title 43A, unless  
14 there is created a duplication in numbering, reads as follows:

15 Any psychological reports, drug and alcohol reports, treatment  
16 records, reports of the diagnostic center, medical records or victim  
17 impact statements which have been submitted to the court or admitted  
18 into evidence under this act shall be part of the record but shall  
19 be sealed and opened only upon order of the court.

20 SECTION 18. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 14-118 of Title 43A, unless  
22 there is created a duplication in numbering, reads as follows:

23 A. The district attorney shall file a special allegation of  
24 sexual motivation within ten (10) days after arraignment in every

1 criminal case other than sex offenses as listed in paragraph 7 of  
2 Section 1 of this act and amendments thereto, when sufficient  
3 admissible evidence exists, which, when considered with the most  
4 plausible, reasonably foreseeable defense that could be raised under  
5 the evidence, would justify a finding of sexual motivation by a  
6 reasonable and objective fact finder.

7 B. In a criminal case wherein there has been a special  
8 allegation, the state shall prove by clear and convincing evidence  
9 that the accused committed the crime with a sexual motivation. The  
10 court shall make a finding of fact of whether or not a sexual  
11 motivation was present at the time of the commission of the crime,  
12 or if a jury trial is had, the jury, if it finds the defendant  
13 guilty, also shall find a special verdict as to whether or not the  
14 defendant committed the crime with a sexual motivation. This  
15 finding shall not be applied to sex offenses as defined in paragraph  
16 7 of Section 1 of this act.

17 C. The district attorney shall not withdraw the special  
18 allegation of sexual motivation without approval of the court  
19 through an order of dismissal of the special allegation. The court  
20 shall not dismiss this special allegation unless it finds that such  
21 an order is necessary to correct an error in the initial charging  
22 decision or unless there are evidentiary problems which make proving  
23 the special allegation doubtful.

SECTION 19. It being immediately necessary for the preservation  
of the public peace, health and safety, an emergency is hereby  
declared to exist, by reason whereof this act shall take effect and  
be in full force from and after its passage and approval.

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