

DIVISION OF ELEMENTARY AND SECONDARY EDUCATION GUIDELINES  
FOR ARKANSAS CODE ANNOTATED § 12-12-901 ET SEQ., “MEGAN’S LAW”  
February 2020

INTRODUCTION

Arkansas Code Annotated § 12-12-901 et seq., known as the Arkansas Sex Offender Registration Act, also known as “Megan’s Law”, is the community notification law that allows law enforcement to communicate with the public when a sexual offender is in their area. The Sex Offender Assessment Committee will assess the offender using a ratings instrument to determine the risk that the offender may pose to the community. The assessment allows local law enforcement to determine who needs to be notified in the community and to tailor the notification according to the offender’s level of risk.

Four levels of risk have been developed for assessment purposes:

- Level I: Usually these are individuals with no prior history of sexual acting out and no strong antisocial tendencies or sexual compulsions or other psychological factors impairing judgment.
- Level II: Usually these are individuals with limited or circumscribed prior history of sexual acting out and/or only mild antisocial or predatory tendencies that increase the general level of risk they pose.
- Level III: These are individuals with histories of repeat sexual offending and/or strong antisocial, violent or predatory personality characteristics. Sexual compulsions are likely to be present, but may be kept under control when relapse prevention plans are followed and treatment is continued.
- Level IV: These are individuals with impaired judgment or control who have sexual or violent compulsions that they lack the ability to control. This may be due to pedophilia or other disorder of sexual attraction, mental illness or personality disorder that distorts thinking or otherwise interferes with behavioral control.

In order to determine an offender’s risk of “re-offense”, the law enforcement guidelines include a risk assessment scale that reviews the seriousness of the offender’s crime, his offense history, and other personal and social characteristics of the offender. Point values are assigned to the factors and total points accumulated on the scale determine the offender’s risk level. The assessment process is not intended to determine the actual probability of any one offender committing another crime, but to provide the basis for a rational method of notification to the public.

Law enforcement will assess the offender and will notify the schools in their area of an offender who is Level II, Level III or Level IV and is likely to prey on school-age children. Law enforcement maintains the discretion to determine who in the community will be notified. For example, if the offender is Level II whose targets are

elementary-school-aged children, law enforcement may only notify the elementary schools in the area and not the secondary schools.

Arkansas Code Annotated § 12-12-913(g)(1) and (3) states:

“(g) (1) The State Board of Education and the Career Education and Workforce Development Board shall promulgate guidelines for the disclosure to students and parents of information regarding a sex offender when such information is released to a local school district or institution of vocational training by a local law enforcement agency having jurisdiction...

(3) In accordance with guidelines promulgated by the State Board of Education, the board of directors of a local school district or institution of vocational training shall adopt a written policy regarding the distribution to students and parents of information regarding an offender.”

These guidelines are to help schools distribute information to their staff, students and parents according to the level of assessment. Law enforcement will inform the schools of an offender and the level the offender has been assessed. The level of assessment will determine whom the school needs to notify.

Level I offenders are considered to be low-risk offenders and not dangerous to the community at large. No notification of students and/or parents is permitted. For low-risk offenders, only law enforcement agencies and adult members of the household where the offender resides, Department of Children and Family Services of the Department of Human Services for juvenile offenders, and victims or guardians of victims for adult offenders should be notified.

Level II offenders are considered to be moderate risk. Law enforcement has the discretion whether to notify schools. If schools are notified on this level, the information is intended to assist staff members in the protection of their charges, not to provide notification to the community at large. For moderate-risk offenders, law enforcement agencies, adult members of the household, and organizations that serve individuals likely to be victimized by the offender should be notified.

Level III offenders are considered to be high risk. Law enforcement will notify schools if appropriate, according to the offender’s profile. Parents and/or students are not automatically notified. If schools are notified on this level, the information is intended to assist staff members in the protection of their charges. However, law enforcement may ask schools to assist in notifying students and parents, as members of the community at large. For high-risk offenders, law enforcement agencies, adult members of the household, and organizations that serve individuals likely to encounter the offender should be notified unless to do so would cause harm to the victim(s).

Level IV offenders are considered to be sexually violent predators. Law enforcement will notify schools, according to the offender’s profile. Again, parents and/or students are not automatically notified. If schools are notified on this level, the information is intended to assist staff members in the protection of their charges. However, law enforcement may ask schools to assist in notifying students and parents as members of

the community at large. Notification of members of the general public in the vicinity of where the offender lives, travels and works should be done.

The principal of each school will have the discretion to make the determination as to which employees within the school should be informed of the notification. This determination must be made within the context of the following definition and the list provided here of employees or volunteers who may fit this description:

**The principal should share the notice with any person who in the course of their employment or assignment is regularly in a position to observe unauthorized persons on or near the property of the notified school.**

The following is an illustrative list of those employees who may be given this information for use in the course of their job-related activities. Since job duties and titles vary from district to district, this list is meant only to provide examples. It is not meant to prevent sharing the notice with someone who meets the definition above but whose job title is not included on this list. Principals should make a determination of whom to notify based on the definition above and on the specific job duties carried out in their schools.

**List of employees or volunteers to be considered for notification:**

- \* **aides/paraprofessionals**
- \* **bus drivers**
- \* **coaches**
- \* **maintenance staff**
- \* **professional support staff**
- \* **school level administrative staff**
- \* **security personnel**
- \* **teacher's assistants**
- \* **teachers**

If any of the above functions are performed by private vendors (i.e. bus companies), the principal or superintendent should inform the private vendor so that employees who in the course of the duties of their employment are regularly in a position to observe unauthorized persons on or near the property of the school may be notified.

**LEVELS OF NOTICE FOR LEVEL II, III AND IV**

**A. Level II: Persons excluded from notification**

You are not permitted to disseminate this information to the following:

- Members of the parent-teacher organizations
- Organizations using school facilities
- Other schools
- Parents or guardians of students

- Press
- Students

If an organization using school facilities such as a scout group or athletic league requests this information from school personnel, the organization should be directed to the area law enforcement that issued the notice.

If members of the press contact a school, they may be informed about the procedures that have been put in place and other general topics. No one may reveal the name or any other specifics regarding an offender. No one should confirm or deny whether notice as to any particular offender has been disseminated.

#### **B. Level III or Level IV: Additional persons who may be notified**

In the case of a Level III or Level IV notification, if your school is located in an area where a vulnerable population is likely to encounter the offender, then area law enforcement notification may include the students in the school and, within law enforcement's discretion, notice will be given to the parents or guardians of those students. The determination as to the appropriate method to use in the dissemination of the notice must be reached through cooperation with area law enforcement.

A list of those persons who may be notified will be provided to you along with the notice. Notice to parents/guardians should be sent home to the parents with the children or by mail. An accompanying cover letter should explain that school employees are aware of the existence and location of the offender and that every possible precaution will be taken to protect the children. Age appropriate discussion may be held in the classroom explaining the potential danger to the students, but they should not be provided with copies of the law enforcement notice. School meetings may be held to provide parents, guardians, teaching staff and administrative staff with information and support.

Copies of the notice should not be posted on school bulletin boards, and copies of the notice should be kept in a secure place accessible to teachers and staff, but not accessible to students or members of the community at large.

#### **OFFENDERS WHO ARE STUDENTS OR PARENTS/GUARDIANS OF STUDENTS**

Nothing in these guidelines is intended to preclude a sex offender registrant from attending school as a student. However, the same procedures for notification apply to students who are sex offender registrants.

Nothing in these guidelines is intended to preclude a sex offender registrant who is the parent or guardian of a child enrolled in a school from entering school property for parent-teacher conferences, for dropping off the child at school, or for any other activity which is appropriate for a parent or guardian. However, please note that in some cases, judicial restraining orders or conditions of probation or parole may limit such activities by sex offender registrants who are parents.

## IMMUNITY

Public officials, public employees, and public agencies are immune from civil liability for good faith conduct under Ark. Code Ann. §12-12-920.

Nothing in Ark. Code Ann. §12-12-920 shall be deemed to impose any liability upon or give rise to a cause of action against any public official, public employee, or public agency for any discretionary decision to release relevant and necessary information, unless it is shown that the official, employee or agency acted with gross negligence or in bad faith.

## NEW STAFF OR STUDENTS; SUBSEQUENT SCHOOL YEARS

### A. NEW STAFF OR STUDENTS

There is no ongoing obligation to distribute notices to students or staff who are enrolled or hired after the initial notification. However, schools may retain notices for training subsequently hired staff. Notices may also be distributed to the parents or guardians of newly enrolled students, during the same school year, at the school's discretion unless law enforcement has notified the school that notice can no longer be given.

### B. SUBSEQUENT SCHOOL YEARS

Schools may use notices for training staff in subsequent school years at the discretion of the principal.

## NOTIFICATION DURING VACATION

It is possible that notification will occur during summer vacation or some other time when school is closed for an extended period. If your school receives a Level II notification, the procedures of these guidelines should be followed for any school employees who are working during the vacation period. Remaining staff members should be informed when they return to work. If your school receives Level III or Level IV notification and is not in session on the day law enforcement conducts notification, notices will still be provided to the school principal. Notices should be mailed to the parents of children who are registered for the upcoming school year along with an explanation that the school employees are aware of the existence and location of the offender and that every possible precaution will be taken to protect the students.

## LIMITATIONS ON NOTIFICATION; CONSEQUENCES OF IMPROPER DISSEMINATION OF INFORMATION

Information about convicted sex offenders is being provided to school personnel so that they can take all appropriate steps to protect students they are supervising. Only law enforcement has the authority to decide who will receive notice. Therefore, it is important that school personnel receiving notice understand that they are receiving sex offender notifications in their official capacity and are not to disseminate information about an offender to anyone outside the school.

Improper dissemination of the information about an offender may lead to disciplinary action being taken. Moreover, law enforcement will carefully investigate all allegations of criminal conduct taken by any person against the offender, the offender's family, employer, or school and, where appropriate, criminal prosecution will occur.

If any school employee has reason to believe that an offender who has been the subject of a notification is a danger to someone outside the school environs, then he or she should immediately contact the local law enforcement agency.

### ADDITIONAL GUIDANCE ON LEVEL III AND IV OFFENDERS

It is against the law for a Level 3 or Level 4 offender to knowingly enter a public school campus unless one of the following circumstances applies:

1. It is not a violation of the law if the offender is under the age of 22 and is a student enrolled in a K-12 program.
2. A Level 3 or 4 offender who is not a K-12 student under the age of 22 may enter the campus to attend a graduation ceremony, or may enter campus on a day not designated as a student contact day or in which no school-sponsored event is taking place on campus.
3. If the offender is the parent or guardian of a student enrolled in a public school, s/he may enter the campus where the student is enrolled to perform one of the following tasks:
  - a. Delivering to the student medicine, food, or personal items if the medicine, food, or personal items are delivered directly to the public school's office; or
  - b. Attending a scheduled parent-teacher conference if the sex offender is escorted to and from the scheduled parent-teacher conference by a designated public school official or employee.
4. A Level 3 offender may enter a campus for the purpose of attending a school-sponsored event for which an admission fee is charged or tickets are sold and distributed if the offender is the parent or guardian of or is related by blood or marriage within the second degree of consanguinity to or is a great-grandparent of a student enrolled in the public school. This includes a student's parents, grandparents, and siblings, pursuant to Ark. Code Ann. § 28-9-212. S/he must also notify the administration of the school in writing at least twenty-four (24) hours before the start of the event that s/he will be attending the event.
5. It is not a violation if a Level 3 or 4 offender has been committed to the Division of Youth Services and attends a school operated by the Division of Youth Services.