



## Newsletter February 2020



### From the Director's desk

*Andy O*

Hello again and welcome to our February newsletter. In this edition we feature the bills which could affect us that were introduced into the second regular session of the 57<sup>th</sup> Oklahoma legislature. Several of these bills could potentially affect registrants, and several on re-entry programs could help felons – provided that their crime was not considered a violent or sexual offense. We will give an update in our April newsletter as the session draws to a close. Stay tuned. If you would like a more detailed blow-by-blow account of these bills as they work their way through, consider joining our organization if you have not already.

We are also publishing a story from one of our members who has overcome deafness, an abusive childhood, and having his dreams shattered. I first talked with Eric (if talking is the right word) when he was in prison. He called on a TTY connection and asked what it will be like on the outside. If you've never had the experience of going through a TTY operator to communicate with someone who is hearing-impaired, try doing it from a time-limited prison line. I answered his questions in a letter.

In this edition, you will also find highlights from our last two Spotlight Calls. In December, Rebecca spoke to us about how to develop relationships with legislators, and then earlier this month, we welcomed Ray, who joined us to speak about the Starkey v. OKDOC court decision of 2013. Our April Spotlight Call will be featuring the residential program for felons, including those with sexual offenses, Hand Up Ministries. It will be led by their founder and president, David Nichols. That Spotlight Call will be Tuesday, April 14<sup>th</sup> at 7:30 PM. These calls are open to all OKRSOL members who are welcome and encouraged to join in, listen, ask questions and discuss.

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### Bills introduced in 2020

*Mark N*

*Legislative Committee Chair*

#### **SB 1202** - Senator Pemberton

This bill would require those, who are required to register in another state, would also have to register in Oklahoma. This is already law, and sooner or later, the bill's author will realize it.

#### **SB 1236** - Senator Young

This bill would authorize the DOC to establish a re-entry program for non-violent offenders.

#### **SB 1298** - Senator Coleman

This bill is similar to SB 1236 and only applies to non-violent offenders.

**SB 1336** - Senator Hicks

This bill would prohibit Oklahoma institutions of higher learning from inquiring about a student's criminal history during the admissions process except for certain sex crimes.

**SB 1448** - Senator David

This bill would seal the criminal records of pardoned felons unless their offense was sexual and other categories. Since a person imprisoned for a sexual offense is never pardoned, this bill will have very little negative effect.

**SB 1462** - Senator David

This bill would add the crime of nonconsensual dis-semination of private sexual images to the list of registerable crimes.

**SB 1698** - Senator Brooks

This is a duplicate bill, the same as SB 1336.

**SB 1798** - Senator Ikley-Freeman

Section 1 of this bill decriminalizes oral sex, and Section 2 increases the statute of limitations on sex crimes to 50 years from the discovery of the crime by law enforcement.

**SB 1838** - Senator Ikley-Freeman

This is a duplicate bill, the same as SB 1448.

**HB 2876** - Representative Dunnington

This bill would repeal the death penalty for certain sex crimes such as first-degree rape.

**HB 3204** - Representative Bush

This bill would eliminate the statute of limitations altogether on sex crimes.

**HB 3168** - Representative Kevin West

This is a duplicate bill, the same as HB 3204.

**HB 3564** - Representative Ford

This bill would be known as The Sex Offender Registration Act of 2020. It currently does not contain any language.

**HB 4136** - Representative Roberts

This bill would be known as the Oklahoma Sex Crimes Act of 2020. This bill, likewise, does not contain any language.

OKRSOL strongly opposes the three bills increasing the statute of limitations. We have written and called each of the legislators, but this one will have momentum as it is the "in thing" to do in this country. Of more concern are the two house bills without language. Legislators who get caught up in a time crunch will often file bills with only a title, planning to add language later. The last thing we want to do is to bug the legislators to find out what they are thinking, and in the process, reminding them to add the missing contents. It is better to check back frequently, hoping they will quietly die in committee.

Weekly updates on these bills are posted on our online discussion group for our members.



**Developing relationships with legislators**

*By Rebecca W*

*(from our December Spotlight Call)*

Rebecca reminded us just how important it is to develop relationships with our legislators. This is not just something for our organization's leadership to do. Anyone, who is interested in what comes out of the legislature and awaits the governor's signature, can be doing this. Get to know your legislator.

### Who do you need to know?

- Your own legislators
- Members of the House and Senate Public Safety and Judiciary committees
- Anyone who authors or co-authors a bill or is otherwise interested in your issues
- Legislative assistants

### What is a relationship with a legislator?

- Personal Contact
- Communication
- Respect
- Mutual understanding
- Time

### How do you do it?

- Show up
- Communicate regularly and share information
- Don't be confrontational
- Know their background
- Be persistent
- Thank them
- Know the process
- Time your communications

### Action steps to take now

- Contact your own senators and representatives and get to know them
- Identify the members of the relevant committees and introduce the organization and the issues
- Identify other legislators with an interest in criminal justice reform and reach out to them
- Reach out to the people who did the recent interim study on registry issues, thank them and offer to provide information/support in the future



### The Starkey Decision

*By Ray C*

*(from our February Spotlight Call)*

Starkey v. Oklahoma Department of Corrections was a case that was decided by the Oklahoma Supreme Court in 2013. James Starkey petitioned the trial court for a reduction of his level assignment. He was a registrant whose registration period was retroactively increased by the Oklahoma Department of Corrections.

The central issue was whether the level system could be applied retroactively. The case took an in-depth look into the ex-post facto argument and ultimately deemed that the level system was punishment and therefore could not be applied retroactively. The trial court found for the plaintiff, but the DOC appealed. The Oklahoma Supreme Court affirmed the lower court decision. The case was litigated by OKRSOL member and attorney John Dunn.

Throughout the case, the Court examined OSORA and many of the provisions attached to it, to determine whether it was so punitive that it would overturn the legislative intent of creating a civil regulatory scheme. The short answer is that it did. The Court stated there is clear proof that the effect of the retroactive application of OSORA's registration is punitive and outweighs its non-punitive purpose. Thus, the retroactive extension of OSORA's registration is inconsistent with the ex post facto clause in the Oklahoma Constitution.

In order to violate the ex post facto clause of both the Oklahoma Constitution and the U.S. Constitution, the law must impose a punishment. A law might do this even if the legislature did not intend to punish assuming the punitive nature outweighs the non-punitive intent. This is exactly what happened in Starkey.

The Court evaluated the increase in time for the three-tiered level system using 7 factors, and the Court found that 5 of the 7 favored a punitive effect. It therefore held that OSORA's registration period and level system could not be applied retroactively. In other words, whatever level you were placed on and whatever your registration period was on the date of your conviction could never be increased. However, if you were convicted in another state or in federal court, your level and registration period are determined from the date you entered Oklahoma and became subject to the Oklahoma Sex Offender Registration rather than the date of your conviction.

Much of what was said in Starkey was only *dicta*, or commentary to aid us in understanding the ruling. Dicta is neither mandatory to state agencies nor binding on the Court in later cases. That is not to say that dicta is not useful. In court it can be persuasive, especially if you are speaking to the same Court.

Even out of court, however, dicta can be useful. We see one example of this in Oklahoma City, where the residency restrictions in place at the time registrants became subject to OSORA are now being enforced. OCPD has made no secret that their decision is based on Starkey, so it is reasonable to assume that one of two things took place – either a registrant brought the decision up and hinted that he might bring suit challenging the residency restriction, or a staff attorney saw the potential for suit and, in an effort to ward off potential litigation, advised that they should make the move they did. Either way, the comments made in the Starkey case, while having no direct effect, were persuasive enough to convince at least one jurisdiction that it wasn't a good case for them to litigate. Unfortunately, there is nothing requiring other jurisdictions to do the same, nor even keeping OCPD from changing its mind tomorrow.

There are many provisions of OSORA that need to be challenged. Residency restrictions are one, but others include renewal of driver's licenses,

the sex offender stamp on driver's licenses, and the ability to go to parks, just to name a few. If you feel that some aspect of OSORA needs to be challenged because it was retroactively applied to you, please consult an attorney.



### **My story**

I was born in Northern California in 1980 about 80% deaf in both ears. I wore hearing aids to help me hear and read lips to communicate. For the first ten years of my childhood, I grew up in an abusive home. My meth addict stepfather was responsible for the horror I suffered as a child. He abused me in every way a person can imagine. I was beaten, molested, and psychologically abused. I was always told I was worthless and was never going to amount to anything most of my childhood. I also witnessed my mother get beaten and terrorized. My mother was abused by her own father and never felt like she was worth much herself. It was hard for my mother to show love to me or support me growing up. All I ever wanted was love and support, but because I was deaf, she never thought I would be able to succeed or take care of myself. This left a hole in me, feeling like I was worthless.

I moved to the suburbs of Kansas City, MO when I was 11 years old. I used my anger on the football field and while running track. I was being rewarded by taking out my anger in a positive way. Instead of getting in trouble with the law, I was hitting people on the football field as hard as I could and being rewarded for it. This resulted in 38 division one scholarship offers across America. When I was 13 years old, I saw a newspaper article about a deaf football player named Kenny Walker. He played for the University of Nebraska and was an All American.

He also played professional football for the Denver Broncos. This gave me hope that I could one day play at the same level as he did. All my life I was told I couldn't do this because I was deaf, and I couldn't do that because I was deaf. When I read that article, I said to myself, if he can do it, then I can do it too. I decided to dedicate myself to football and do whatever it took to get to the next level. I made sure I got good grades and worked out three times a day. Still, along the way, many tried to derail my dreams and put me down every chance they could.

I came to the University of Oklahoma in 1999 as a member of Coach Bob Stoops first recruiting class. I was in awe of the rich history and tradition of the football program. I had a feeling that if I came to the University of Oklahoma, we were going to do something great. Sure enough, we won the Big XII Championship and the National Championship in 2000. I started out playing linebacker and was moved to defensive end. I was a backup, but I got a lot of playing time. During the OU-Texas game in 2000 at the Cotton Bowl, I was playing against an offensive lineman by the name of Leonard Davis. He was 6'10" and 378 lbs. Late in the third quarter, I got blindsided by Leonard Davis, and I felt a pop in my head. The medical staff and I thought I just had a concussion, but something was wrong. I was getting headaches, nausea, dizziness, and spots in my vision. As the season progressed, I was struggling just to make it through practice.

When the season ended, the doctors took an MRI of my head and found a hole in my ear canal. After this, the doctors told me that my football career was over. Now that my football career was over, I no longer had football to distract me from my past. I started to sink down the rabbit hole, into my depression and became a drug addict to ease the pain. Despite all the success in the world, I really didn't have any family to share it with. I had many friends that tried to fill that role, but I was still hung up on the past and pushed everyone away. I was throwing away a promising future and started making one bad choice after another. By some miracle, I still

managed to graduate from college. I became a functioning addict. I published an autobiography called "Silent Thunder" and traveled as a professional speaker to support my habit. I was inspiring other people, but I could not inspire myself.

As I started going down the wrong path, I started thinking and doing illegal things. I would be deeply ashamed and felt guilt for thinking and doing these things. Many times, I considered suicide because I never really wanted to hurt anyone. I was arrested with three counts of lewd conduct with a minor and one count of possession of child pornography. To make matters worse, it was my best friend's underage daughter. I was so racked with guilt and remorse for my behavior that I should do the world a favor and end my life. I took responsibility for my actions and confessed to my sins. I was sentenced to 10 years in prison and 20 years of probation. I thought my life was over. I fell from the top to the very bottom.

I never really had much of a relationship with my biological Father who never saw me play sports and was an alcoholic. He was in and out of prison all my childhood. When I was arrested, he reached out to me while he was in prison and said he still loved me. We were both locked up in prison at the same time. For five years, we wrote back and forth to each other and mended fences with each other. In 2015, he died of cancer. Before he died, he told me on the phone that he was ready to meet his maker and was at peace. He made me promise to give God a chance. After he passed, I was using drugs in prison. One day I was tired of being a slave to my addiction and started thinking about what my father told me before he passed. I asked myself who I want to be when I walk out that gate. I knew, if I didn't change, I might as well turn around and walk right back in when I was released. So, I began to think some more and realized that all my life I was trying to do everything on my own. At this moment, I also realized that I can't do everything on my own. Three years ago, I gave myself to Jesus Christ. It

felt as if the weight of the world lifted off my shoulders. I no longer felt depressed, and I stopped taking medication. I forgave everyone, who hurt me when I was younger, and freed myself from my anger. I was finally able to break free from addiction. My head injury started to feel better, to the point I started working out again.

God had turned my life around for the better. Despite the challenges of being labeled a “sex offender”, I am optimistic and hopeful for the

future. Hand Up Ministries, Inc. gave me a wonderful place to come to and have a great staff of Christian brothers. Today, I will always walk the path that God wants me to go. All things are possible through Christ. God Bless.

#### **Do you have a story to tell?**

Contact us at [www.ok-rsol.org/contact](http://www.ok-rsol.org/contact) or call 405-294-4299 and tell us about it.



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