

SUBJECT: Sex offender registration revisions; public notification

COMMITTEE: Public Safety — favorable, with amendments

VOTE: 5 ayes — Oakley, Bailey, Allen, Driver, Luna

0 nays

4 absent — Carter, Edwards, Madden, McCoulskey

SENATE VOTE: On final passage, April 4 — voice vote

WITNESSES: None

BACKGROUND: Since 1991 Texas has required registration of persons convicted of, or given deferred adjudication for, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, sexual performance by a child and possession or promotion of child pornography or who receive a fourth conviction for indecent exposure.

Thirty to 90 days before offenders who are required to register are due to be released from prison, a prison official must notify offenders of the requirements, require them to sign a statement that they were notified or, if the offender will not sign a statement, certify that they were notified. The prison official must also obtain the address where the offender expects to live and inform the Department of Public Safety (DPS) and the police chief or county sheriff in that area of the offender's name, release date, new address and offense. Courts are responsible for the prerelease notification requirements for offenders subject to registration who receive deferred adjudication, probation or only a fine.

Offenders must register with local law enforcement authorities (police or sheriff) within seven days of arriving in a locality in which they reside or intend to reside for more than 7 days. Registration information includes name, date of birth, physical description, social security and driver's license numbers, address and the offense. Local law enforcement agencies are required to forward the information to DPS. When offenders change addresses they must report the change to the local law enforcement with

whom they last registered; the local law enforcement authority must send the information to DPS and, if the move is to a new city or county, DPS must forward the information to the local law enforcement authority in the new area.

Offenders must report as long as they are on parole or probation, until they turn 21 if they were a juvenile when the offense was committed, or, if a person is put on deferred adjudication, until a charge is dismissed and the person is discharged or the person finishes probation or parole.

It is a Class A misdemeanor (maximum penalty one year in jail and \$4,000 fine) to fail to register, and repeat offenses are a third-degree felony.

Through April 1995 DPS had registration information on about 7,277 offenders. About 67 percent of those notified by the prison system or a court of registration requirements had complied, DPS estimated. It is unknown what portion of sex offenders are being notified of the requirements.

DIGEST:

SB 267 would expand the offenses subject to the sex offender registration requirements, revise the prerelease notification and notice of move requirements, require newspaper publication when certain sex offenders move into an area and require DPS to keep a data base of sex offender registration information.

SB 267 would take effect September 1, 1995.

Offenses. SB 267 would apply the registration requirements to persons (adults and juveniles) convicted of or who receive deferred adjudication for the following offenses:

- aggravated kidnapping, if it was committed with the intent to violate or abuse the victim sexually;
- first-degree felony burglary, if it was committed with the intent to commit indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct or aggravated kidnapping with intent to violate or abuse sexually;

- convictions (but not deferred adjudication for) second, instead of fourth, offenses for indecent exposure;
- criminal attempt, conspiracy or solicitation of any of the other offenses except for indecent exposure, that would subject a person to registration; and
- convictions under other states' laws for offenses similar to the ones that require registration in Texas;

The age of the victim, and the offender's shoe size, photograph and fingerprints would be added to the registration form.

Persons required to register would have to report to the local law enforcement authority and verify the information on the registration or correct any wrong information and sign the form. Persons would have to register or verify their registration information within seven days of moving to a city or county.

Persons who do not move to an intended residence by the seventh day after being released on parole, placed on probation or leaving a previous residence would be required to report their temporary address to their probation or parole officer at least weekly.

Prerelease notification. Prison officials would have to complete the DPS-provided registration form and obtain a photograph and fingerprints of the offender who will be released from prison and forward the form to DPS, the police chief of the city where an offender intends to live or the sheriff if the offender intends to live outside of a city or to the appropriate agency in another state if the offender intends to move out of state. Prison officials would have to notify the person of the registration and verification requirements required upon release and when moving and have them sign a statement that they were notified.

Courts would have to ensure that prerelease notification and registration for offenders who receive probation, deferred adjudication or only a fine are conducted either by a community supervision and corrections department representative or another designated person. The Texas Department of

Criminal Justice's parole division or the local probation department would perform prerelease notification and registration for offenders convicted of offenses in other states and placed on parole or probation in Texas.

Notice publication in newspaper. Upon receiving a registration form, local law enforcement authorities would be required to verify the age of the offender's victim and, if the victim was under 17 years old and the offense was not committed by a juvenile, was not prohibited sexual conduct (incest) and the offender was not given deferred adjudication, to immediately publish notice in a local newspaper. The notice would have to be in both English and Spanish and would have to be published again one week after initial publication. The notice would have to include the offender's age, gender, a brief description of the offense, and the city, street and zip code where the person intends to reside.

If the victim was under 17 years old, local law enforcement would have to immediately provide notice by mail to the public school superintendent in the district in which the person intends to reside. The notice would have to include any information necessary to protect the public but could not include the offender's social security number, driver's license number, telephone number and any information that would identify the victim.

A person would be able to petition the district court for an injunction to stop a newspaper notice from being published. Courts would be authorized to grant any injunctive relief including stopping the publication if the person proved that the publication would place the person's health and well-being in immediate danger.

Persons would be required as a condition of probation or parole to pay a fee for the cost of the newspaper notice publication. The probation department or the parole division would be required to remit the fee to the local law enforcement.

Change of address. Persons who intended to move would have to report in person at least seven days before the move to the local law enforcement authority with whom they are registered and to their probation or parole officer and provide them with the anticipated move date and their new address. The probation or parole officer would have to send the

information within three days to the local law enforcement authority with which the person last registered and, if the person was moving to a new city or county, to the local law enforcement authority in that jurisdiction.

Local law enforcement authorities would be required to forward within three days the change of address information to DPS and if the person is moving to another city or county to the local law enforcement authority in the new area. If a person moves to another city or county DPS would be required to inform the local law enforcement in the new area within three days of receiving notice. Within eight days of receiving notice, the local law enforcement in the new area would have to publish a notice in the local newspaper, subject to the same requirements applied to the original notice.

If the person did not move to the new address by the move date, the person would have to report to local law enforcement authority with which the person last registered within seven days of the move date and provide an explanation and any new move date and would have to report at least weekly during any period in which the person has not moved into the new residence.

Persons who move to another state that has a registration requirement would have to register with the appropriate agency within 10 days of moving. DPS would be required to forward information to the appropriate agency in the other state and send a copy of the person's registration form to the Federal Bureau of Investigation.

Central database. DPS would be required to maintain a computerized central database with only the sex offender registration information. Information in the database would be public information with the exception of the person's photograph, social security number, driver's license number, numeric street address and telephone number and information that would identify a victim. Local law enforcement would be required to release any of the information that is not restricted upon written request. The authority could charge a reasonable fee for the information. DPS, a penal institution or a local law enforcement authority would be authorized to release any of the registration information that is not restricted and would not be liable for releasing the information.

DPS would be required to maintain in the computerized criminal history system information on whether an offender is required to register.

Written judgment. The written judgment of a court in a case of a person who is required to register would have to include a statement that registration is required and the age of the victim.

Registration as a condition of probation. Judges who grant community supervision to a person who is required to register would have to make registration a condition of probation.

Juvenile records. DPS would no longer be required to destroy registration information when persons turn 21 years old if as a juvenile they committed an offense that subjects them to registration. If a person turned 21 years old before September 1, 1995, the record would be destroyed.

SUPPORTERS
SAY:

SB 267 would give communities better notice when a known child sex offender moves into their area and would revise the current sex offender registration system to include more offenders, to make sure that offenders are aware of the requirements and to ensure registration information is passed among the prison system, probation and parole officers, the courts and law enforcement authorities.

SB 267 would require that local law enforcement authorities notify communities through the newspaper when a known child sex offender moves into the locality. It is especially important that communities be aware of child sex offenders since they prey on vulnerable children.

Community notification of the location of sex offenders would allow persons living in the area to protect themselves and their children. Sex offenders are often repeat offenders. In addition, public notification can deter sex offenders from committing additional offenses. A community's right to know if a sex offender has moved into the neighborhood overrides any privacy interests of the offender.

The local community would be notified through the newspapers and could request information through local law enforcement authorities. This would help the entire community, not just a sex offender's immediate neighbors,

protect itself. Giving notice to school authorities that a child sex offender is living in the area would allow them to be on guard if a sex offender is near a school.

SB 267 contains safeguards to prevent vigilantism and harassment of sex offenders such as including only a partial address and not including pictures in the newspaper notification. Sex offenders would be protected from harassment just like other persons under current Penal Code provisions. To help protect the privacy of incest victims, the bill would not require newspaper publication if an offense was prohibited sexual conduct (incest). However, because offenders who commit incest can be danger to the community, some information would still be given to school authorities and available through law enforcement authorities.

SB 267 would provide further safeguards by allowing offenders to ask a court to stop a newspaper notice. The court could stop the publication if offenders could prove it would place their health and well-being in immediate danger.

SB 267 would strengthen the current registration law by establishing clear responsibilities and deadlines for prison officials, probation and parole officers, courts and local law enforcement authorities to share sex offender registration requirements. The bill would establish clear requirements for offenders to notify certain entities of their address, moving plans and if they fail to make a reported move. This would ensure that offenders do not fall through the cracks and escape registration.

By requiring a statement that an offender is subject to registration requirements be included on the written judgment, SB 267 would ensure that all criminal justice entities that might deal with the offender are aware of the requirements.

SB 267 would expand the offenses for which a person is required to register to ensure persons convicted of aggravated kidnapping or first-degree burglary with the intent to commit a sex crime are covered by the requirements.

SB 267 would allow Texas to join the at least six other states with some form of community notification. Numerous other states are considering notification laws.

OPPONENTS
SAY:

SB 267 could infringe on individual rights and make it impossible for persons convicted of certain offenses ever to reintegrate into society.

Community notification through the newspaper of persons' offense and address would infringe on their constitutional right to privacy and make it virtually impossible for persons who have paid their debt to society to rebuild their lives. Community notification after persons are released from prison or while persons are on probation is constitutionally questionable and in the case of someone on parole would amount to punishment *after* offenders have finished their sentences and an increase in the penalty for certain offenses.

Public notification laws have led to a host of problems in other states. Offenders have given law enforcement officials addresses of friends or relatives without their consent leading vigilantes attacking innocent persons mistakenly thought to be sex offenders. Publicizing the names and addresses of sex offenders could also damage victims, particularly incest victims, and other innocent parties.

Public notification would not protect society from sex offenders but would promote a false sense of security for some communities. Only a small number of persons that the ex-offender may come in contact with would receive public notice through a newspaper. Only a fraction of sex offenders would be identified, since many offenses are never reported and many others do not result in convictions.

Public notification would lead to repeats of recent cases in which persons were released from prison and then driven from community to community and could not find a place to live. This makes it impossible for persons to get a job, build a life and reintegrate into society. If the state is going to require public notification, it should make provisions to handle community harassment of ex-offenders.

Notification laws could impede offenders' rehabilitation by implying that society does not trust them. Released sex offenders need constant counseling and treatment, not constant monitoring.

OTHER
OPPONENTS
SAY:

This bill does not go far enough and should allow for community notification of all sex offenders, extend the duty to register beyond the current deadlines and further expand the offenses subject to registration.

NOTES:

The committee amendments would eliminate a specific time window for prison officials to notify inmates who are required to register of the law, require representatives of community supervision and corrections department or court designees to conduct some prerelease notification requirements, and eliminate several specific references to sex offender registration information that would have been made in the DPS statutes on criminal history records and replace it with a requirement that DPS include in the computerized criminal history system information concerning whether a person is required to register.

The House on May 10 passed HB 1379 by Allen and Greenberg, which would expand the offenses subject to the sex offender registration requirement, require the Board of Pardons and Paroles or a court to assign released offenders a numeric risk level, require community notification when sex offenders move to a locality and extend the time that an offender must register.