

SUBJECT: Searching juveniles on parole or probation or in school

COMMITTEE: Juvenile Justice and Family Issues — committee substitute recommended

VOTE: 7 ayes — Goodman, Staples, McClendon, McReynolds, Naishtat, A. Reyna, Smith
0 nays
2 absent — J. Jones, Williams

WITNESSES: For — Bob Green, Jr., Texas Fathers' Alliance; Lonnie Hollingsworth, Texas Classroom Teachers Association; Tom Martin, Texas Police Chiefs Association
Against — None

DIGEST: CSHB 278 would amend various statutes to specify that parole and probation officers would not need to have reasonable suspicion to search juveniles or the property in their immediate possession to determine if they were possessing, carrying, using, or exhibiting a firearm if the juvenile had been released to probation or parole for conduct that involved the use of a firearm. The parole panel, court or commission that released the child would have to specify as a condition of release that the child was prohibited from possessing, carrying, using, or exhibiting a firearm.

CSHB 278 also would allow a teacher, school official, or peace officer acting on the request of a school official to search a student if they had reasonable suspicion that the search would produce evidence that the student had violated a state or federal law or a rule adopted by the school board. The scope of the search would have to be related to the search's objective and not be excessively intrusive considering the student's age, gender and suspected conduct.

The section of CSHB 278 dealing with school searches would take effect beginning with the 1997-98 school year. The sections concerning searches by parole and probation officers would take effect immediately if the bill

was finally approved by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

CSHB 278 would give school officials and parole and probation officers the tools they need to protect themselves and others from juveniles who may be carrying a firearm or pose a safety threat to people with whom they come into close contact.

Parole panels and judges sometimes are not aware that they can prohibit possession of firearms as a condition of probation or parole. CSHB 278 would make it clear that judges have this authority. The bill also would clarify that parole and probation officers do not need to meet the reasonable suspicion standard to search for firearms a juvenile who has previously been arrested for an offense involving firearms, if they are required to be in close proximity to the juvenile offender. This would provide important protection for parole and probation officers, who as part of their job must be unarmed in a room with a juvenile who has previously been convicted of a firearms-related offense. Concern about the officer's safety in these situation should outweigh concerns about any right of a juvenile who is on probation or parole not to be searched for dangerous weapons.

The bill also would clearly establish the constitutional standards school officials must meet in order to conduct a search of a student. The bill would not expand school officials' rights in this area, but would simply codify into state law the standards defined by the U.S. Supreme Court, including a requirement of reasonable suspicion and that the search not be excessively intrusive and be reasonably related to the objective of the search.

**OPPONENTS
SAY:**

CSHB 278 would encourage school officials, police officers, and parole and probation officers to search certain students more frequently simply because they have the clear authority to do so. The bill would turn juveniles into second-class citizens by violating their Fourth Amendment protection against unreasonable search and seizure. The portion of the bill that allows parole and probation officers to conduct a search without reasonable suspicion could be used in a discriminatory way and lead to increased searches of juveniles targeted for reasons unrelated to the search.

Just because a juvenile has been previously adjudicated for a firearms-related offense does not mean the juvenile no longer has basic constitutional rights. Probation and parole officers already have the right to frisk a person whom they suspect is armed and dangerous, but they must have at least reasonable suspicion that the person poses a threat. Without this protection, parole and probation officers could routinely search a juvenile on parole or probation for a firearms-related offense any time they are looking for evidence of a crime. Any evidence turned up as part of such a search could be used as evidence against the juvenile.

NOTES:

The committee substitute added provisions specifying that parole and probation officers are not required to have reasonable suspicion if they are required to be in close proximity to a juvenile who has been adjudicated for possession of firearms. The committee substitute also changed the language in the original bill dealing with searches of students to specify that reasonable suspicion is required and that the scope of the search must be reasonably related to the objective of the search and not excessively intrusive.