

SUBJECT: Revisions to sex offender registration and notification law

COMMITTEE: Public Safety— favorable, with amendment

VOTE: 7 ayes — Oakley, Driver, Keffer, Madden, McClendon, Olivo, E. Reyna
0 nays
2 absent

SENATE VOTE: On final passage, Local and Uncontested Calendar, April 24 — 29-0

WITNESSES: For — None
Against — None
On — Paul Jordan, Department of Public Safety

BACKGROUND : In 1995 the 74th Legislature revised the state's sex offender registration law to include public notification of the whereabouts of some sex offenders and to make some sex offender information open to the public. Adults and juveniles are subject to the registration law if they are convicted of, or receive deferred adjudication for: indecency with a child; sexual assault; aggravated sexual assault; prohibited sexual conduct (incest); sexual performance by a child; possession or promotion of child pornography; aggravated kidnapping, if committed with the intent to violate or abuse the victim sexually; first-degree burglary, if committed with the intent to commit certain sex offenses; criminal attempt, conspiracy or solicitation of certain sex offenses; convictions under other states' laws for similar offenses; and convictions (but not deferred adjudications) for second offenses for indecent exposure.

If a sex offender's victim was younger than age 17, local law enforcement agencies must immediately publish in a local newspaper a notice of the offender's whereabouts. The notice, in both English and Spanish, must be republished a week later. The notice must identify the offender by age and gender, briefly describe the offense, and list the city, street, and postal zip code where the person intends to live. Publishing a notice *is not* required,

even if the offense was against a young victim, in three instances: (1) the offender was a juvenile; (2) the offense was prohibited sexual conduct (incest); or (3) the offender was given deferred adjudication. Notices also must be published if an offender changes addresses.

The Department of Public Safety (DPS) is required to keep a database of sex offender registration information. Certain information in the database, including offenders' names, is considered public information and must be released by local law enforcement to the public upon request. Local law enforcement may not release an offender's Social Security, driver's license or phone numbers, photograph, numeric street address, or any information that would identify the victim.

As of April 1997, about 3,700 persons have been subject to the public notification requirements, and another approximately 12,700 offenders had registered with DPS.

For more information on the state's sex offender registration and notification laws, see *Debate Continues on Texas' Sex Offender Notification Law*, House Research Organization Focus Report Number 74-23, July 24, 1996.

DIGEST:

SB 875, as amended, would expand the information required to be included in a newspaper notification of sex offenders' whereabouts, include private schools in notification requirements, require school authorities to take certain actions with information they are given, retroactively apply registration requirements to some offenders, require criminal justice officials to give DPS information on offenders' status if it changes, and authorize DPS to require offenders to periodically verify their registration information.

SB 875 would take effect September 1, 1997.

Duty to register. Rather than require certain offenders to register based on when their offense occurred and when the offense was included in the registration statute, SB 875 would require registration of all offenders with reportable convictions that occurred after September 1, 1991, and who are under some type of supervision, either in a penal institution or on probation or parole. Newspaper notification requirements would apply only to offenses that occurred on or after September 1, 1995.

SB 875 would subject persons to reporting and registration requirements, regardless of whether an appeal was pending.

SB 875 would eliminate a current provision that allows offenders to petition judges for an exemption from the registration requirements and that requires judges to grant the exemption if the offender shows good cause.

Newspaper notice. Under SB 875, the newspaper notices of the whereabouts of certain sex offenders would have to include the offender's full name, numeric street address or physical address, and a recent photograph.

Notification to school superintendents, private schools. If a victim were under 17 years old, SB 875 would require law enforcement authorities to notify administrators of *private schools* located in the public school district where the offender intends to live, in addition to the current requirement that they notify superintendents of public schools.

On receipt of notice of a sex offender in their district, superintendents or administrators of public and private schools would be required to release the information in the notice to appropriate school district or private school personnel, including any peace officers and security personnel, principals, nurses and counselors.

School superintendents and administrators would be able to release information they have received about sex offenders to the public, if the information was considered public information under the sex offender registration and notification law. Private schools and school administrators would not be liable for damages resulting from conduct authorized by the statute.

Status report by supervising officer. SB 875 would require probation or parole officers supervising an offender to notify local law enforcement authorities if they received information that an offender's status had changed in any manner that affected the proper supervision of the offender, including a change in the offender's physical health, job status, incarceration, or terms of release.

Verification of registration information. Local enforcement authorities could require offenders to report once a year and verify the registration information. The offender would be required to make any necessary additions or changes to the registration form if it contained inaccurate information.

Law enforcement authorities would be authorized to, at any time, mail a verification form to an offender's last reported address. Within 21 days offenders would have to indicate on the form their current address, complete any new information required by the form, sign and return it.

Miscellaneous. SB 875 would make other changes, including:

- adding to the statute language specific to juveniles;
- specifying that any information in the DPS database required by DPS in addition to information required by statute would not be public information;
- requiring persons subject to registration to ensure that their registration form was complete and the items accurate;
- requiring the DPS registration form to include whether the person had been discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision, by January 1, 1998;
- requiring DPS to maintain in its computerized criminal history system any information in its sex offender database, instead of requiring that DPS include in the criminal history system only whether a person is required to register, by January 1, 1998; and
- removing requirements that courts inform persons of their duty to register, complete and send registration forms to DPS, the Texas Department of Criminal Justice and local law enforcement agencies.

SUPPORTERS
SAY:

SB 875 would fine-tune the state's sex offender registration law and give the public more complete information on sex offenders so that it can better protect itself. In addition, SB 875 would move the sex offender registration laws into the Code of Criminal Procedure where they would be easily accessible for criminal justice officials. Sex offenders are often repeat offenders, and it is especially important that communities be aware of their presence. The need for community safety overrides any privacy interests of these offenders.

Duty to register. Retroactively requiring registration for some offenders would ensure that law enforcement authorities and the public are able to keep up with these dangerous offenders. SB 875 would apply only registration, not public notification requirements, retroactively. SB 875 would apply the requirement to currently reportable offenses that have occurred since 1991, when the state's sex offender registration law was enacted. Since then, the reportable offenses have been modified, and it would be in the interest of public safety to require all these offenders to register. The bill would apply only to persons who are still under state supervision, not those who have completely discharged their sentences. The courts have upheld the right of a state to require retroactive registration as a method of monitoring these offenders.

To ensure that all dangerous offenders are subject to the law's requirement, SB 875 would clarify that all convicted offenders, even those with a pending appeal, fall under the law.

SB 875 would no longer allow offenders to ask judges for an exemption from the registration requirements, because all offenders should be required to register. Local law enforcement and the public should be able to keep track of all released offenders. Although the bill would eliminate exemptions from registration, offenders would still be able to petition district courts to stop newspaper publication of their whereabouts.

Newspaper notification. SB 875 would provide the public with more information about child sex offenders to allow greater awareness of and protection from these offenders when they are released into the community on probation or parole or after serving a prison sentence. Courts have ruled that states have a legitimate interest in public safety that permits adequate

community notification of the whereabouts of sex offenders.

Currently, the information about sex offenders that is published in newspapers is not specific enough. It does not list the offender's name or numeric street address or give their photograph. Such vague data does little to help the public and can lead to needless fears and groundless suspicions. Including a photograph would make it easier for communities to identify an offender and make the announcements easier to locate in the newspapers. Although citizens can obtain an offender's name from police and sheriffs, they should be able to obtain this and additional information directly from the newspaper notices.

Public notification about sex offenders since 1995 has not led to increased vigilantism or harassment of offenders. Sex offenders living in the community are protected from harassment just like other persons under Penal Code provisions. In addition, persons subject to registration can petition a district court for an injunction to stop publication of a newspaper notice if they can prove that publication would place their health and well-being in immediate danger. Several other states have included offenders' names and photographs in their community notification about sex offenders without serious incident.

The law would continue to require parolees and probationers to pay for the newspaper notices of their whereabouts. Current law gives law enforcement authorities, probation and parole officers and offenders the necessary flexibility to work out the best, most expedient arrangements.

Notification to school superintendents, private schools. SB 875 would help protect all children by including private schools in the provision for notification to school officials about the whereabouts of sex offenders. As a practical matter, law enforcement authorities would be able to ask for private schools to register with them so that they would know whom to notify about sex offenders who move into the area.

SB 875 also would clarify what school officials should do with the sex offender information they receive from law enforcement authorities. Because current law does not specify what school officials are supposed to do with the information, they have developed varying policies, leading to

confusion. SB 875 would provide a more consistent statewide policy concerning the distribution of sex offender information by specifying that superintendents are required to give the information to certain appropriate school personnel with direct supervision over children. The bill would not limit school district superintendents to distributing the information to the four categories of personnel listed in the bill, they would still retain the discretion to release the information to other persons as they deemed necessary.

Status report by supervising officer. SB 875 would ensure there is communication among criminal justice officials about changes in an offender's situation. This would help law enforcement authorities to have the best possible information in their files.

Verification of registration information. SB 875 would authorize law enforcement agencies to require offenders to update their registration information. This would help ensure that law enforcement authorities have accurate information in their files and would help Texas meet federal requirements concerning sex offender registration.

OPPONENTS
SAY:

Duty to register. SB 875 would unfairly subject some persons to registration that was not required when they committed their offense. This would be akin to changing a person's punishment after they have been tried and sentenced. In addition, persons should not be subject to the registration law if their case was on appeal. Offenders should retain the ability to ask a judge for an exemption to the registration requirements, if they demonstrate good cause, so that exceptions can be made for individual circumstances.

Newspaper notification. Current law requires the newspaper notices about sex offenders to contain enough information for the public to protect itself and to raise awareness about sex offenders' whereabouts. SB 875 would go too far by publishing the name, address and photograph of these offenders and would infringe on these individuals' privacy rights. Citizens who want additional information about sex offenders need only make a request to law enforcement authorities.

The original notification requirements kept offenders' names, photographs and addresses out of the newspaper notice to protect offenders from

vigilantism and harassment. Disclosing this information could lead to harassment against persons trying to get on with their lives or, even more importantly, to the easy identification of victims. In addition, it could cause unwarranted panic over the presence of sex offenders in a neighborhood and make it impossible for these persons ever to reintegrate into society.

Notification to school superintendents, private schools. The bill is unclear about what would be considered a private school that must receive sex offender information and whether entities such as home schools and day care centers would have to be included in the notification. In addition, law enforcement authorities would have no way of knowing of the existence of a private school to notify.

The current system that gives complete discretion to school superintendents to act on sex offender information should be retained. These types of decisions are best left up to local school district officials, who are usually in the best position to weigh the danger to children and to make decisions about passing on sex offender information.

Verification of registration information. If an offender's registration information has not changed, it is unfair to allow law enforcement authorities to require offenders to report annually to the authorities' office.

OTHER
OPPONENTS
SAY:

Newspaper notification. By requiring that a photograph be included in the newspaper notices, SB 875 would be costly to local law enforcement agencies who must publish the notices. While the law specifies that certain offenders must pay for the notices, in most cases local police departments pay for the publication but are unable to recoup the money from offenders.

NOTES:

The committee amendment would add the list of school officials who would receive sex offender information from the superintendent or private school administrator and require in the published notice the offender's full name, numeric street address, and a recent photograph.

HB 3113 and HB 1736 by McClendon, et al., which contain provisions expanding what must be included in newspaper notifications of sex offenders' whereabouts and what school superintendents must do with sex offender information, have both passed the House and been referred to the Senate Criminal Justice Committee.