

SUBJECT: Reorganizing and revising sex offender registration laws

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Keel, Riddle, Pena, Denny, Escobar, Hodge, P. Moreno, Raymond, Reyna

0 nays

WITNESSES: For — Carrol Montgomery; Sue Montgomery; Dean Guyton; James Jones; Richard J. Jones;

Against — Marjorie J. Brinegar, Leticia F. Martinez, Vicki Parks, Save our TexSons; Rosemary Fair-Poole, Sex Offender Support and Education Network; Peggy Tipton; Thom O. Tipton

On — Michele Molter, Texas Apartment Association

BACKGROUND: The Texas sex offender registration and notification law requires some sex offenders to register with local law enforcement authorities and requires public notification about the whereabouts of some sex offenders. Offenders must register with local law enforcement authorities, and criminal justice officials must notify local law enforcement authorities when sex offenders plan to move to their jurisdiction. The Department of Public Safety (DPS) maintains the statewide sex offender database.

In some cases local law enforcement authorities are required to publish in a local newspaper a notice about offenders and their whereabouts. Notices cannot be published about juvenile offenders, offenders convicted or given deferred adjudication for prohibited sexual conduct (incest) with a child victim, or offenders assigned by a numeric risk level of one by the state's risk assessment review committee. The notice must identify the offender by name, age, and gender, briefly describe the offense, list the address where the person intends to reside, include a photograph or an Internet address where a photograph is accessible, and the person's numeric risk level.

In some cases, local law enforcement authorities must provide notice to the school officials in the school district where the offender intends to live.

The DPS is required when an offender is assigned the highest risk level of three to provide written notice mailed or delivered to addresses near where the offender lives.

In general, a person's duty to register lasts for the person's lifetime for more serious offenses and for other offenses expires 10 years after the later of the date a person discharges a sentence, is released from county jail, or discharges probation.

Two types of offenders have procedures for asking a court to exempt them from registration requirements: those who committed their offenses while they were under age 17 and those who committed certain offenses when younger than 19.

Under Art. 62.13, some offenders who committed offenses as juveniles and have an adjudication for delinquent conduct can ask a court to excuse them from their obligation to register. Courts must hold hearings on the motion and exempt the person from registration if it determines that:

- the protection of the public would not be increased by registration of the juvenile; and
- any potential increase in protection of the public resulting from registration is clearly outweighed by the anticipated substantial harm to the juvenile and his family that would be caused by registration.

Under Code of Criminal Procedure, Art. 62.015, a person is eligible to petition the court if required to register only as a result of one conviction, other than an adjudication of delinquent conduct, if the court made an affirmative finding that at the time of the offense the defendant was younger than 19 and the victim at least 13 and the charge in the case is based solely on the age of the victim.

After a hearing, courts can exempt the person from registration if it appeared by a preponderance of the evidence presented by a registered sex offender treatment provider that the exemption did not threaten public safety and that the person's conduct did not occur without the consent of the victim or intended victim.

Many of the state's sex offender registration rules and regulations are driven by federal requirements under the Jacob Wetterling Crimes Against

Children and Sexually Violent Offender Registration Act and other federal legislation. Some federal grant funds are tied to meeting requirements in these laws.

DIGEST:

CSHB 867 would reorganize the current laws in Code of Criminal Procedure, ch. 62, dealing with sex offender registration, and would make several other changes to the sex offender registration laws, including: adding two offenses to the list requiring registration, eliminating the requirement for newspaper notification, creating a process for the early termination of registration obligations for some persons, and requiring all of those subject to registration to give a sample for the state's DNA database.

CSHB 867 would take effect September 1, 2005. Any changes to the elements of or punishment for violations of ch. 62 would apply only to conduct engaged in on or after that date. Other provisions dealing with the venue where ch. 62 offenses could be prosecuted and admonishments by courts also would apply to actions on or after the bill's effective date. Other changes apply to people subject to registration for offenses committed before, on, or after September 1, 2005.

Additional offenses. CSHB 867 would add two criminal offenses to the list of offenses that trigger requirements for registering as a sex offender: improper relationship between educator and student and improper photography or visual recording.

Newspaper notifications. CSHB 867 would eliminate the current requirement that local law enforcement authorities publish newspaper notices about certain registered sex offenders. As part of their general authority to notify the public in any manner deemed appropriate, local law enforcement authorities would have authority to publish newspaper notices about registered sex offenders at their discretion.

Early termination. Upon request of a person with a single conviction requiring registration, the Council on Sex Offender Treatment would have to evaluate the person using the risk assessment tool authorized in the bill to be developed or adopted by the council. The risk assessment tool would have to evaluate the criminal history of a person, try to predict the likelihood that the person would commit another sex offense, and try to predict whether the person was a continuing danger to the community.

The council would give the person a report of the evaluation, which would be confidential and not considered public information.

A person who received a risk assessment from the council could file with the court a motion requesting early termination of registration. Courts could deny the motion without a hearing or hold a hearing on the motion. Courts could not grant an early termination motion if the length of time the person was required to register under the Texas law did not exceed the minimum time required for registration under federal law.

Those filing motions for early termination would be responsible for all costs associated with providing the assessment and holding the hearing.

Requiring a DNA sample. DPS would have to require law enforcement agencies to take a DNA specimen from registered sex offenders who had not already submitted one for the state DNA database. Registered sex offenders would be required to comply with a request for a DNA specimen made by a law enforcement agency. Law enforcement agencies would be able to send either the specimen or an analysis of the specimen to DPS.

These changes would apply only to persons who had to register for the first time as sex offenders on or after the bill's effective date.

Other provisions. CSHB 867 would make other changes, including :

- requiring the Council of Sex Offender Treatment to determine the minimum registration periods required under federal law for Texas to receive the maximum federal funds and to compile and publish information about the registration periods;
- requiring registrants who had told law enforcement authorities that they would be changing addresses but did not move to their new address within seven days of the anticipated move to report to their primary registration authority at least weekly;
- allowing an offense under the sex offender registration statute to be prosecuted in any county in which an element of the offense occurred; the county in which the person last registered or verified registration; the county in which a person subject to registration indicated that the person was going to register; or any county in which a person was placed in custodial arrest for another offense;

- requiring courts substantially to comply with the current requirement that they tell defendants of their duty to register before accepting a guilty plea and making the failure of the court to comply with this requirement not a ground for setting aside a conviction, sentence or plea;
- adding the executive director of the Council on Sex Offender Treatment and a registered sex offender treatment provider to the risk assessment review committee, which oversees the screening tool used on offenders to assign their risk level;
- including in the general immunity from liability for good faith conduct employees and officers of the Board of Pardons and Paroles, local law enforcement authorities, and the risk assessment committee;
- expanding the current requirement for post card notification of the whereabouts of certain sex offenders from residential addresses to all address, other than post office boxes; and
- requiring prosecutors to receive certain notices about hearings and motions for exemptions from registration.

**SUPPORTERS
SAY:**

CSHB 867 would reorganize the state's sex offender registration law so that it more easily could be used and understood by those required to register, courts, law enforcement authorities, probation and parole officers, defense and prosecuting attorneys, and others. Several subsequent amendments to the 1991 law have made the statute confusing and complex. CSHB 867 would address this problem by reorganizing the sections, streamlining requirements, and clarifying language.

Additional offenses. CSHB 867 would ensure that the sex offender registration law covered all sex offenders by including two newer offenses not currently on the list of offenses that trigger registration: improper relationship between educator and student, which would cover sexual relationships or encounters between teachers and students, and improper photography or visual recording, which would make it an offense to photograph or videotape or record another person without consent and with intent to arouse or gratify the sexual desire of any person.

Newspaper notification. CSHB 867 would eliminate the requirement that newspaper notices be published about some offenders because evidence does not support this as an effective way to ensure public safety. Publication is a financial burden on some law enforcement agencies and has been made unnecessary by other factors, such as DPS' online

registration database. The public can request information directly from DPS, which is required to notify neighbors about high-risk offenders through postcards. Also, federal law does not require newspaper notification.

Early termination. CSHB 867 would create a limited exemption option for some offenders so that courts could exempt from registration those determined not to present a continuing threat to society. This would allow law enforcement authorities and the state to focus their resources on offenders who threatened public safety and would serve the interests of justice for offenders who were not a threat to re-offend.

The exemption option created by CSHB 867 would apply only to first-time, non-aggravated offenders who had lifetime registration under Texas law but only 10-year registration under federal law, and who had been meeting their registration obligations for 10 years. In addition a court would have a risk assessment of the person to consider in its deliberation.

The exemption option in CSHB 867 is carefully crafted to meet federal requirements so that Texas would not lose federal funds. The new exemption option would not cost the state or local law enforcement authorities anything because the bill would require people petitioning for an exemption to pay the council and the court all associated costs.

The exemption created by CSHB 867 would be similar to the one already in law for those who committed their offenses while juveniles or in certain cases when they were 18 or 19 years old.

Requiring a DNA sample. CSHB 867 would ensure that all registrants submitted samples for the state's sex offender data base by enacting a specific requirement and authorization for persons required to register. Currently, everyone in the registry should be required under other laws to submit a sample but, because the other laws can be confusing, complete compliance with current law is not always achieved.

OPPONENTS
SAY:

Newspaper notification was enacted as another way to help notify the public about a sex offender's whereabouts, and it should not be eliminated. Not all Texans have access to the Internet to inspect DPS' online registration database and not all Texans know to request information directly from DPS. Eliminating newspaper notification could create a gap in the public safety net.

The early termination option in CSHB 867 could result in registration exemptions for some offenders who should continue registering for the safety of the public.

OTHER
OPPONENTS
SAY:

CSHB 867 would not go far enough to address problems with the state's sex offender registration laws. For example, the state needs to give courts more leeway to handle non-violent, non-victim, first-time sex offenders who perhaps should not have to register. The law tends to lump all offenders together instead of focusing resources on those who most endanger public safety.

The early termination option in CSHB 867 is too limited. The conditions could be loosened so that additional offenders who were not at risk to re-offend could apply to be excused from registration.

NOTES:

The committee substitute made several changes to the original bill, including adding the procedures for some offenders to ask a court for early termination of registration and adding the requirement that prosecutors receive certain notices about hearings and motions for exemptions from registration.