

- SUBJECT:** Requiring future electronic monitoring for convicted sex offenders
- COMMITTEE:** Criminal Jurisprudence —favorable, without amendment
- VOTE:** 6 ayes — Gallego, Aliseda, Burkett, Christian, Rodriguez, Zedler
0 nays
3 absent — Hartnett, Carter, Y. Davis
- WITNESSES:** For — (*Registered, but did not testify:* Jim Sylvester, Travis County Sheriff's Office)

Against — Philip Taylor, Texas Voices for Reason and Justice; (*Registered, but did not testify:* Cathy Cannon, Gerry Cannon; Jessica Catrett; Clarence Clark, Edith Clark; Jacalyn Clark; Gordon Day; Karin Day; Beverly Elam; Jan Fewell; Clare Fleming, Ventana Del Sol; Richard Gladden; Albertine Hendrickson; Sven Hendrickson; Charles Hosey; Janice Hosey; David Kugle; Josephine Ann Kugle; Charlotte Lewis; Mary Sue Molinar, Texas Voices for Reason and Justice; Mike Sessions; Linda Smith; Troy Touchstone; Dillon Wardian; Gary Wardian)

On — Thomas Ruocco, Texas Department of Public Safety
- BACKGROUND:** Penal Code, secs. 21.02 and 21.11 (a)(1) create an offense for continuous sexual abuse of a young child or children and for indecency with a child, respectively. Penal Code, secs. 22.011 and 22.021 define sexual assault and aggravated sexual assault.

Penal Code, sec. 30.02 prohibits compelling the sexual performance of a child. Penal Code, sec. 30.02(d) creates an offense when burglary is committed with the intent to commit another felony.
- DIGEST:** HB 3001 would require a court sentencing a person for a sex offense to determine the likelihood of a person committing a future sex offense and to require electronic monitoring after the person was released from prison.

The bill would require the ruling on electronic monitoring to be made as part of a sentence for continuous sexual abuse of a young child. indecency

with a child, sexual assault, aggravated sexual assault; forced sexual performance by a child with an intent to violate or abuse the victim sexually; or burglary with intent to commit rape. The court would make the finding based on a preponderance of evidence whether the person should be considered a high-risk sex offender who was likely to recommit the same offense.

The electronic monitoring requirement would apply to any high-risk sex offender who had been discharged from prison but was not civilly confined in a mental health facility as a dangerous sex offender or was no longer on parole.

HB 3001 would require DPS to develop a monitoring system that tracked people's location. DPS would be required to solicit requests for proposals for monitoring systems by September 15, 2011. The local law enforcement agency where the person would have to register as a sex offender would be responsible for tracking the person using the monitoring system.

The monitoring system would be required to provide a cumulative report on the person's whereabouts on a periodic basis but would not be required to provide a real-time report on the person's location.

High-risk sex offenders determined not to be indigent would be required to pay a monthly fee to DPS and the local law enforcement agency to cover the cost of the monitoring equipment and the monitoring service.

Failure to participate in the monitoring system would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000).

HB 3001 would allow for the high-risk sex offender to petition for a court hearing on an exemption from the monitoring program after 10 years. However, the order for the monitoring would not expire and could be reinstated for violations of sex offender registration requirements under Code of Criminal Procedure, art. 62, or if a court found that removing the monitoring system would pose a threat to public safety.

The bill would also authorize DPS to solicit and accept any gift, grant, donation from a foundation, private entity, government, or institution of higher learning to help fund implementation of the high-risk sex offender monitoring program.

HB 3001 would apply only to offenses that occurred on or after the bill took effect on September 1, 2011.

**SUPPORTERS
SAY:**

HB 3001 would help provide an effective deterrent to an extremely dangerous group of repeat sex offenders who are outside the criminal justice system. Allowing for outpatient civil commitment and passage of California's Jessica's Law has meant that most of these predators are removed from society for long periods of time. The bill would account for that extremely small percentage that is free to roam our streets and threaten our safety.

HB 3001 would implement measures to correct deficiencies in the electronic monitoring provisions of California's Jessica's Law. HB 3001 would apply to high-risk sex offenders no longer in prison or on parole, unlike the California requirement that all sex offender parolees be monitored. Texas would have to account for a smaller population of sex offenders needing additional supervision. HB 3001 also would provide for better coordination between DPS and local law enforcement agencies. It also would set severe penalties, which the California law lacked, for those removing or disabling the monitoring devices.

Requiring the determination of the risk of future offenses at the time of the original sentencing would avoid the constitutional questions about double jeopardy. Similar double jeopardy concerns were raised and dismissed about civil commitment of sex offenders.

DPS should be allowed to develop innovative and flexible ways to help fund the electronic monitoring system programs. The current fiscal crisis means that the Legislature must consider alternative funding sources for needed public services. Some of the costs would be offset by fees paid by high-risk sex offenders.

**OPPONENTS
SAY:**

The experience with tracking systems required by California's Jessica's Law demonstrates that tracking systems do not guarantee deterrence for sex offenders. Overemphasizing these kinds of programs could create a false public belief that a complex problem can be solved with a piece of technology. Monitoring devices would be better used as part of a larger treatment and tracking plan.

Imposing additional penalties beyond prison time raises serious questions about double jeopardy or the unconstitutional punishment of a person

twice for the same offense.

**OTHER
OPPONENTS
SAY:**

If the Legislature believes that HB 3001 would address an important public safety question, it should be willing to fund the program with state revenue.

NOTES:

The author is expected to offer floor amendments that would change the implementation date to September 15, 2017, and would permit DPS to seek future legislative appropriations for the program as well as gifts, grants, and donations.