

SUBJECT: Community notification of sex offenders required to register

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 6 ayes — Oakley, Bailey, Allen, Driver, Edwards, Madden
0 nays
3 absent — Carter, Luna, McCoulskey

WITNESSES: For — Robert Carreiro, Justice for All and Parents of Murdered Children;
Sara McCammon
Against — None
On — Dimitria D. Pope, Melinda Hoyle Bozarth, Texas Department of
Criminal Justice; Megan Mills, representing Senator Florence Shapiro; Eliza
May, Council on Sex Offender Treatment

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 offenders expect 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 information to the DPS. When offenders change addresses they must report the change to the local law enforcement with whom they last registered; the local law enforcement must send the information to the DPS; and, if the move is to a new city or county, DPS must forward the information to the local law enforcement 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 discharged or the person finished 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:

CSHB 1379 would expand the offenses that can make a person subject to the sex offender registration requirements, require the Board of Pardons and Paroles or a court to assign released offenders a numeric risk level, require community notification when a sex offender moves to a locality and extend the time that a person must register.

CSHB 1379 would take effect September 1, 1995.

Offenses. CSHB 1379 would apply the registration requirements to persons (adults and juveniles) who commit the following offenses:

- first offenses for sale, distribution or display of harmful material to a minor and employment harmful to children;
- second offenses for public lewdness;
- second, instead of fourth, offense for indecent exposure; and

- first convictions that are similar to the offenses that require registration for first offenses in Texas, and fourth convictions under federal law or laws of other states for offenses similar to indecent exposure.

Assignment of risk level. Thirty to 90 days before an offender subject to the registration requirements is due to be released from prison the Board of Pardons and Paroles would be required to determine the offender's level of risk to the community and assign the person a numeric risk level using levels set in the bill. The board would have to immediately send notice of the risk level to the offender's prison, and it would have to be included in the information about an offender that is given to DPS and local law enforcement authorities.

Courts would have to make the risk determination and inform DPS and local law enforcement of it for offenders placed on deferred adjudication, community supervision or given only a fine.

The following guidelines would have to be used to determine risk levels:

- level one — offenders who have a victim or witness under 17 years old, used a weapon, or have a history and propensity to engage in criminal sexual conduct with a primary purpose of victimization;
- level two — offenders who have only one offense subjecting them to registration and have no history and propensity to engage in criminal sexual conduct with a primary purpose of victimization; and
- level three — offenders who have only one offense subjecting them to registration, have received mental health or other treatment while in prison and show signs of successful rehabilitation; and there is reason to believe that the person does not pose a significant threat to the community.

Community notification. Local law enforcement authorities (police or sheriff) would be required to post notice at certain locations and give a copy of the notice to the public school superintendent and private school administrators in the school district where the offender intends to live.

The notice would have to include the offender's name; the street, but not the number, where the offender intends to live; the nature of the offense, except for any indication that the offense was prohibited sexual conduct (incest); the offender's assigned risk level; and the offender's prison release date. The notice could not disclose the identity of the victim.

The notice would have to be posted at the following locations where the offender intended to live: the county courthouse, the sheriff's office, each county constable's office; the municipal police department's headquarters; the main post office; and the main branch of the public library. If an offender does not intend to live in a city, notice would have to be posted in the city closest to where the person intends to live.

When offenders who are required to register change addresses, they would have to register their new address and would have to inform the local law enforcement authority with whom they were last registered. After the local authority informs DPS of the new address and DPS informs the local authority in the new area, the local authority would have to follow the posting requirements.

Registration duration. The duty to register would be changed so that it lasted until the 10th anniversary of the date offender was released from prison, or completed parole or community supervision, whichever is later. For persons who commit offenses while juveniles, the duty to register would last until the 10th anniversary from the date the offender ceased to be under Texas Youth Commission (TYC) supervision; the date the offender was discharged from TYC or the Texas Department of Criminal Justice; or, if the offender was not committed to TYC, the date the disposition is made or the person completes the terms of the disposition, whichever is later. Persons given deferred adjudication would have to register until the 10th anniversary of the date criminal proceedings are dismissed, or, if the case is finally adjudicated, the date the person is released from TDCJ or is discharged from parole or probation.

Miscellaneous. TDCJ's parole division would be required to issue a warrant ("blue warrant") for the return of persons who are on parole or mandatory supervision and who are required to register but do not or who do not comply with a registration requirement.

DPS would no longer be required to destroy the registration information of a person with a juvenile offense when the person turned 21 years old.

Criminal justice officials would be added to the entities that can receive registration information. Local law enforcement authorities, individuals or other entities could not be held liable for releasing information that they were required to release.

The bill would take effect September 1, 1995.

**SUPPORTERS
SAY:**

Community notification of the location of sex offenders would allow persons living near known sex offenders to protect themselves and their children. Sex offenders are often repeat offenders, and the public should be given all possible tools to protect itself. In addition, notification laws 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.

Community notification under this bill is not restricted to only the immediate neighbors of a sex offender. Any interested person would be able to go to a courthouse or other library and find out that a sex offender has moved into the community. Giving notice to school authorities would allow them to be on guard if a sex offender is near a school.

CSHB 1379 contains safeguards to prevent vigilantism and harassment of sex offenders such as posting only partial addresses and not including pictures. Sex offenders would be protected from harassment just like other persons under current Penal Code provisions. To help protect the privacy of incest victims, this bill would prohibit public information indicating that an offense was prohibited sexual conduct (incest). However, because offenders who commit incest can be danger to the community, other information would still have to be reported.

Including a risk level of offenders on the notification documents would allow the public to gauge the danger that an offender represents and would let the public know if an offender *does not* pose a threat to the community.

CSHB 1379 would strengthen the current registration law by allowing offenders who fail to register and are on parole to be taken off the streets. The duty to register would be extended to 10 years after the offender was released from prison or completed parole or probation to allow law enforcement and the public to keep up with sex offenders. CSHB 1379 would expand the offenses for which a person is required to register to ensure that all sex offenders are covered by the requirements.

CSHB 1379 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:

Community notification would infringe on offenders' constitutional right to privacy and make it virtually impossible for persons who have paid their debt to society to rebuild their lives. Community notification is constitutionally questionable and amounts to punishment *after* offenders have finished their sentences and to an increase in the penalty for certain offenses. It is especially unfair and legally questionable to extend registration and notification requirements for 10 years after someone has completed probation or parole.

Public notification laws have led to a host of problems in other states. Offenders have given law enforcement officials addresses of friends or relative without their consent leading to difficulties for these innocent people, and vigilantes have attacked persons thought to be sex offenders. Publicizing the names and addresses of sex offenders could 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 have received public notice, and sex offenders do not commit crimes just in their own neighborhoods. 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.

The Board of Pardons and Paroles and courts would be ill-equipped to analyze reports and assign risk levels to offenders.

OTHER
OPPONENTS
SAY:

Posting notices at courthouses and public libraries is inadequate public notice. Notice should be published in a newspaper or mailed to community members.

NOTES:

The committee substitute made numerous changes in the bill including:

- requiring the assignment of a numeric risk to offenders;
- expanding the list of specific places where public notice must be posted and eliminating authority for the local law enforcement agency to chose three places to post notice;
- eliminating the requirement that a photograph be included in the public notice, requiring that the street name be included in the notice and requiring that notices exclude indications that the offense was prohibited sexual conduct;
- extending the length of time that offenders would have to register;
- eliminating requirements that judges include registration as a condition of probation for offenders required to register and that probationers and parolees who are required to register obtain a statement of compliance with the requirements to be given to probation or parole officer; and
- requiring registration of persons committing similar crimes under U.S. or other states' laws;

SB 267 by Shapiro would expand the offenses for which a person would be subject to the registration requirements and would require public notice including notice in newspapers when some sex offenders move into a locality. SB 267 has been approved by the Senate Criminal Justice Committee.