

SUBJECT: Revisions to the sex offender registration and notification law

COMMITTEE: Corrections — committee substitute recommended

VOTE: 5 ayes — Hightower, Allen, Farrar, Gray, Hupp

0 nays

4 absent — Alexander, Edwards, Marchant, Serna

WITNESSES: *(On original version):*

For — Sterlene Donahue and Woody Clements, Justice For All; Deborah Moore; Vivian Lewis Heine

Against — Victor Gonzalez, The First Amendment Coalition of Texas; Tommy Saathoff

On — Melinda Hoyle Bozarth, Texas Department of Criminal Justice

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 state's laws for similar offenses; and convictions (but not deferred adjudications) for second offenses for indecent exposure.

Prison or other criminal justice officials are responsible for supplying initial registration information to local law enforcement authorities. 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:

CSHB 489 would expand the offenses that make offenders subject to the state's sex offender registration and notification law, require risk assessments of offenders, apply registration retroactively to some offenses dating to 1970, and extend the requirement to register for life for some offenders. The bill also would add provisions specific to juveniles and juvenile law in sections dealing with juvenile offenders who are subject to the law.

CSHB 489 would take effect September 1, 1997.

Offenses. CSHB 489 would add convictions for the following offenses to the list of those that make persons subject to the sex offender registration and notification law:

- promotion of prostitution, aggravated promotion of prostitution, compelling prostitution and obscenity; and

- second convictions for public lewdness involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl, obscene display or distribution, and employment harmful to children.

The bill would subject offenders who commit prohibited sexual conduct (incest) to the law's requirements only if the defendant was 18 years or older at the time of the offense instead of all convictions.

Risk level. Texas Department of Criminal Justice (TDCJ), Texas Youth Commission (TYC), the Texas Juvenile Probation Commission, and the Council on Sex Offender Treatment would be required to consult and develop a standard risk assessment instrument for adults and one for juveniles to be used to determine the risk level of sex offenders subject to registration.

Before a person who is subject to registration was released from a prison or a juvenile facility, the TDCJ or the TYC would have to determine the person's level of risk to the community and assign the person a risk level using criteria established by TDCJ or TYC. The risk level would have to be included with the information sent to DPS and local law enforcement authorities.

For persons receiving deferred adjudication, juvenile probation or community supervision and for misdemeanor offenses, a court would have to determine a person's risk level and ensure that pre-release notification and registration requirements were conducted. The risk level would have to be obtained on recommendations submitted by local community supervision and correction departments or juvenile probation departments using the standard risk assessment instrument. Person's risk level would have to be included in DPS' computerized database of sex offenders' registration information.

CSHB 489 would repeal requirements that a court inform persons about their duty to register, complete the original registration form and send it to DPS, a penal institution and local law enforcement. Pre-release notification procedures would have to be done by probation officials or others appointed by the court.

Duty to register and public notification. Instead of requiring public, newspaper notification only of certain sex offenders whose victims were children, CSHB 489 would require that public notification be made for all felony convictions that subject someone to registration requirements, except for convictions for prohibited sexual conduct (incest).

School superintendents would have to be notified about the whereabouts of all persons subject to registration who intend to reside in the school district. (Currently, this occurs only if the victim was younger than 17 years old.)

CSHB 489 would apply the *registration* requirements to offenses listed in the statute that have occurred on or after September 1, 1970.

For some persons there would be lifetime registration. Exceptions to this requirement would be adults and juveniles whose offense was prohibited sexual conduct (incest) or promotion of prostitution or attempt, conspiracy or solicitation to commit these offenses or two offenses of public lewdness involving animals, indecent exposure, obscene display or distribution or employment harmful to children. For juveniles who committed these offenses, the duty to register would last until the 10th anniversary of the date of disposition in the case or the date the juvenile completed the terms of the disposition. For adult convictions or deferred adjudications for these offenses, the duty to register would last until the 10th anniversary of the date a court dismissed criminal proceedings and discharged a person, a person discharged probation or a person who committed a misdemeanor was sentenced to county jail.

Persons would still be able to petition judges for an exemption to registration and notification requirement. However, instead of judges being required to grant the exemption upon showing good cause, judges would be permitted to grant an exemption after a hearing if a person proved by a preponderance of the evidence that registration would place the person's health and well-being in immediate danger.

CSHB 489 would raise the penalty for failing to register from a Class A misdemeanor (maximum penalty of one year in jail and a \$4,000 fine) to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) and raise the penalty for repeat offenses from a third-degree felony

to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000).

SUPPORTERS
SAY:

Offenses. CSHB 489 would add to the list of those subject to the state's sex offender registration and notification law so that law enforcement authorities would know the whereabouts of these serious offenders and so communities could be alerted to their presence. Sex offenders tend to be repeat offenders, and communities have a right to information about their presence in the community.

These offenses are associated with sexual predatory behavior. For example, employment harmful to children can be a gateway to child sex abuse, and promotion of prostitution can lead to the sexual exploitation of women and children. It is important that tabs be kept on these offenders by law enforcement authorities and that communities be aware of their presence.

Risk levels. Assigning risk levels to offenders and requiring that they be included in a sex offender's information would help law enforcement authorities and communities better assess the danger that offenders represent. This information would be available to the public through the DPS database.

Duty to register and public notification. Retroactively requiring registration for some offenders would ensure that law enforcement authorities and the community are able to keep up with these dangerous offenders. CSHB 489 would apply only to persons with offenses committed since 1970 who are still under state supervision. Courts have upheld the right of a state to require retroactive registration.

CSHB 489 would apply the retroactive registration requirement beginning with offenses committed in 1970 because this is the year the state began to keep more accurate criminal records.

Offenders would keep the right to petition courts for an exemption to these requirements, but judges would rightfully have full discretion in these matters. HB 489 would give the court more guidance in making these determinations and allow judges the flexibility to make proper decisions.

Even if a victim may not want information about an offender publicized, society deserves to know about these offenders.

OPPONENTS
SAY:

Offenses. CSHB 489 would go too far in expanding the offenses that require registration and notification. The law was designed to give law enforcement authorities and communities information about the whereabouts of certain violent, dangerous sex offenders. CSHB 489 would include many inappropriate offenses in the act. For example, someone who commits promotion of prostitution or obscene display or distribution does not represent the same danger to communities that a rapist represents and should not be subject to registration and notification requirements.

Risk assessment. Because some offenders can be rehabilitated and not all offenders represent the same risk to society, CSHB 489 should eliminate those placed at the lowest risk level from public notification.

Duty to register and public notification. It would be unfair to expand the duty to register to persons who committed their offenses before the sex offenders registration law was enacted. CSHB 489 would unfairly require persons who committed an offense over 20 years ago and who may have been law abiding ever since to register with local law enforcement. This would amount to additional punishment after an offender has already been sentenced. In addition, it may be impossible to monitor because reliable crime records often do not exist as far back as 1970. The state has only required localities to submit records to the DPS since 1993, and even now there is not 100 percent compliance. Short of combing through local crime records in each city or county, it might be impossible to know if persons are supposed to register.

Extending registration for life for some offenders also would be unfair. At some point, offenders should be able to prove that they have rehabilitated themselves. Current law requiring 10 years of registration provides that opportunity. Requiring lifetime registration would make it virtually impossible for offenders to ever reintegrate into society.

OTHER
OPPONENTS
SAY:

Victims should be given the right to petition a court to prevent public notification about sex offenders. For a variety of reasons, some victims may not want information about a crime to be publicized and they should have an avenue to keep this information private.

NOTES:

The committee substitute made numerous changes in the original version of the bill including: changes in the offenses subject to registration; a requiring that TDCJ or TYC rather than the Board of Pardons and Paroles make some risk assessments; removing guidelines for assigning risk levels; removing a requirement that risk levels be included in the newspaper notice; retroactively applying the duty to register to offenses committed after 1970; and changing in the length of registration requirements.