

**SUBJECT:** Prohibiting sexual offenders from attending regular public schools

**COMMITTEE:** Public Education — favorable, without amendment

**VOTE:** 6 ayes — Grusendorf, Branch, Eissler, Hochberg, B. Keffer, Mowery  
0 nays  
3 absent — Oliveira, Delisi, Dutton

**WITNESSES:** For — Lindsay Gustafson, Texas Classroom Teachers Association  
Against — Marcia C. Rachofsky, Texas Mental Health Consumers  
On — Ramiro Canales, Texas Association of School Administrators, Texas Association of School Boards; Elizabeth “Liz” Komrei, Department of Family and Protective Services.

**BACKGROUND:** Under Education Code, ch. 37, a student must be expelled if the student commits certain serious offenses on school property or while attending a school-sponsored or school-related activity on or off of school property. These offenses include indecency with a child, sexual assault, and aggravated sexual assault.

Counties with populations of more than 125,000 are required to operate a juvenile justice alternative education program (JJAEP). If a student is expelled under ch. 37 for sexual assault, aggravated sexual assault, or indecency with a child, the juvenile court, juvenile board, or board’s designee, as appropriate, must order the student to attend the JJAEP. A student placed on probation must attend the JJAEP from the date of disposition as a condition of probation, unless the child is placed in a post-adjudication treatment facility. A student placed on deferred adjudication must attend a JJAEP for up to six months. The mission of JJAEPs is to enable students to perform at grade level. A JJAEP must focus on English/language arts, mathematics, science, social studies, and self-discipline.

Counties with populations of less than 125,000 are not required to operate JJAEPs, but each school district must operate a district alternative education program (DAEP) that:

- is provided in a setting other than a student's regular classroom;
- is located on or off of a regular school campus;
- separates students in DAEPs from students in the regular program;
- focuses on language arts, mathematics, science, history and self-discipline;
- provides for students' educational needs; and
- provides supervision and counseling.

A DAEP may provide for a student's transfer to a different campus, a school-community guidance center, or a community-based alternative school. School districts may provide a DAEP jointly with one or more other districts. A student removed to a DAEP is counted in computing the average daily attendance for that district.

**DIGEST:**

HB 878 would amend Education Code, ch. 37, to specify that a student could not be placed in a regular classroom or campus in a Texas school district if the student had been adjudicated or placed on deferred prosecution or probation for indecency with a child, sexual assault, or aggravated assault. This would apply whether the conduct occurred on or off of school property.

The bill would take effect on September 1, 2005, and would apply to conduct occurring on or after this date.

**SUPPORTERS  
SAY:**

HB 878 would ensure that students who commit sexual offenses were not permitted to attend school with their victims, even if the offense occurred outside of school property. Under current law, a student who commits sexual assault and related offenses on school property must be expelled, but there is nothing to prevent a student from returning to school if the offense occurred elsewhere. Victims of these crimes should not be further punished by having to attend school with their attackers. The bill would not prohibit students from attending an alternative education program, so students would not be prevented from getting a basic education.

Under current law, school boards and other local authorities have little recourse if a student who has committed a sexual offense returns to campus after meeting the conditions required by the court. These crimes have a high recidivism rate that makes separation from other students appropriate. HB 878 would ensure that victims would not have to attend school with their attackers.

It is unlikely that the bill would create significant additional costs to the state or local districts because the provisions regarding offenses occurring off campus are expected to apply to a limited number of students. Larger districts already are required to send students who have committed sexual offenses on campus to JJAEPs. A district that does not operate a JJAEP or an off-campus DAEP would not be required to accommodate these students and thus would not face additional costs.

OPPONENTS  
SAY:

HB 878 in effect would impose a life sentence on students who commit sexual offenses by prohibiting them from ever returning to a regular classroom or campus. Most alternative education programs are designed to serve students temporarily and are not set up to provide a full curriculum leading to high school graduation. By being consigned to alternative education programs indefinitely, these students would have little hope of ever graduating and likely would drop out of school altogether. Even students who had met the conditions required by the court would be denied the opportunity ever to return to a regular campus.

The bill would take away any ability for local officials to make decisions about placement based on individual circumstances. While no sexual offense is acceptable, matters of degree must be taken into account when a student's education is at stake.

The bill does not offer any guidance about the placement of students if a district does not operate an off-campus alternative education program. In many smaller communities, these students would have no place to go.

While the fiscal note indicates that there would be no significant impact to the state, the Texas Juvenile Probation Commission estimates costs to JJAEPs of nearly \$7 million over the next biennium, primarily because of the additional time these students would have to spend in JJAEPs. JJAEPs, which are funded through set-asides from the Foundation School Program, are already underfunded and do not have the resources to handle this additional burden. The Legislative Budget Board also estimates substantial costs for school districts because 76 percent of districts do not maintain a separate DAEP-only campus. TEA estimates that school districts would have to accommodate at least 46,000 additional students in separate facilities beginning in the 2005-06 academic year, at a likely cost to school districts of millions of dollars.

NOTES:

A related bill, HB 308 by Hope, was reported favorably, as substituted, by the Public Education Committee on March 29. CSHB 308 would apply to students who have been convicted, adjudicated, placed on deferred adjudication, placed on probation, or whose prosecution has been deferred for committing sexual assault or aggravated sexual assault against another student who at the time of the offense was assigned to the same campus, as well as the victim of this offense. The bill would apply to conduct occurring on or off of school property.

If a parent or other person with authority to act on behalf of the victim requested that the victim be transferred to another campus in the district, the district would be required to grant the transfer, but would not be required to provide transportation. If the victim did not wish to transfer, the school board would be required to transfer the student who engaged in the conduct to a different campus than the one where the victim was assigned or to an alternative education program. The school district would have to notify the victim of where the student who engaged in the assault was enrolled. The bill also would require all districts to have an alternative education program in a facility other than a regular school campus.