

SUBJECT: Increased penalties for sex offender registry violations with identity theft

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Herrero, Carter, Burnam, Canales, Hughes, Leach, Moody

0 nays

2 absent — Schaefer, Toth

WITNESSES: For — None

Against — (*Registered, but did not testify*: Jacalyn Iversen)

On — (*Registered, but did not testify*: Lisa Hoing, Office of the Attorney General)

BACKGROUND: Code of Criminal Procedure, sec. 62.102 makes it a crime for those who are required to register with the state's sex offender registry to fail to comply with any requirement of the registry.

Violations are state jail felonies (180 days to two years in a state jail and an optional fine of up to \$10,000) for those required to register for 10 years, third-degree felonies (two to 10 years in prison and an optional fine of up to \$10,000) for those subject to lifetime registration with annual verification, and second-degree felonies (two to 20 years in prison and an optional fine of up to \$10,000) for those subject to lifetime registration with verifications every 90 days.

Penal Code, sec. 32.51 makes it a crime to fraudulently use or possess the identifying information of others without their consent and with the intent to harm or defraud another. Offenses are state jail felonies, third-degree felonies, second-degree felonies, or first-degree felonies (life in prison or a sentence of five to 99 years and an optional fine of up to \$10,000), depending on the number of items possessed or used.

DIGEST: HB 2637 would increase the punishments for failing to comply with the state's sex offender registry requirements and for attempts to commit this offense if done with the fraudulent use of identifying information in

violation of the Penal Code, sec. 32.51 provisions on identity theft. The punishments would be increased to the next highest felony.

The bill also would increase the punishments for the offense of fraudulently using or possessing the identifying information of another if the identifying information were used with the intent to facilitate a violation of the sex offender registry requirements. Current state jail, third-degree, and second-degree felony punishments would be increased to the next highest category.

The bill would take effect September 1, 2013, and would apply to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 2637 is necessary to address the alarming use of identity theft by sex offenders trying to avoid the oversight of the sex offender registry. Current penalties for both the crime of failing to follow the requirements of the registry and for identity theft are inadequate to punish and deter these serious crimes when they are related.

In Texas and other states, sex offenders have stolen the personal identifying information of others and used it to live a life under an assumed identity free from the requirements of the sex offender registry. In a Texas case, a sex offender lived for years under an assumed identity and outside the reaches of the registry. After finally being convicted for failing to follow the sex offender registry requirements, he received less than two years of probation, a mere slap on the wrist. In a Vermont case, a sex offender obtained a military identification and lived for years under the soldier's identity.

Violating the sex offender registry requirements and identity theft are especially dangerous when committed in tandem. Sex offenders committing these crimes have demonstrated that they will go to great lengths to avoid the oversight of the registry, putting the public at risk. Victims of identity theft suffer financially and emotionally, and it can be extremely difficult for them to put their lives back together, especially if their identity was stolen by a sex offender.

Current punishments for these individual crimes do not reflect the harm caused when they are related. While offenders could be prosecuted for each individual crime, punishments would run concurrently, resulting in no increase in punishment for the combination of crimes.

HB 2637 would address these issues by increasing the punishments for both non-compliance with the sex offender registry and identity theft if the crimes were related. Longer sentences for violators of the sex offender registry who also commit identity theft would better protect the public, and, it is hoped, deter these crimes in the first place.

**OPPONENTS
SAY:**

Current law adequately punishes both the crimes of non-compliance with the sex offender registry and identity theft. These punishments have a wide range that can be adapted to the seriousness of a violation. For example, failing to comply with the sex offender registry requirements can be a second-degree felony, with two to 20 years in prison. Identity theft can be punished as severely as a first-degree felony, ranging from 5 to 99 years or life in prison.

NOTES:

The companion bill, SB 827 by Whitmire, has been reported favorably by the Senate Criminal Justice Committee and recommended for the local and uncontested calendar.