

BILL ANALYSIS

Senate Research Center
80R5344 KCR-D

S.B. 1740
By: Shapiro
Criminal Justice
4/5/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As proposed, S.B. 1740 makes several changes to the statute governing the Texas sex offender registration program. The bill brings the statute in line with the federal requirements for sex offender registration, creates an electronic mail subscription notification function for the Texas sex offender registry, requires a school district to register to receive electronic mail notifications of when a new sex offender moves into the district, and clarifies that, pursuant to a recent opinion by the attorney general, out-of-state offenders are under the same duty to register as those who served their sentences in a Texas penal institution, including those offenders who have received deferred adjudication. The bill also creates a three tier system of sex offenses in order to determine the amount of time a convicted sex offender is required to register as such, requires law enforcement to submit notification of an offender's registration to the administrative offices of any public housing authority located in the areas of a person's registration, and broadens the definition of where an offender resides.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Department of Public Safety in SECTION 8 (Article 62.005, Code of Criminal Procedure) of this bill.

Rulemaking authority previously granted to Council on Sex Offender Treatment is modified in SECTION 23 (Article 62.402, Code of Criminal Procedure), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 42.015, Code of Criminal Procedure, as follows:

Art. 42.015. New heading: FINDING OF AGE OF VICTIM AND RELATIONSHIP OF ACTOR AND VICTIM. Requires the judge, in a trial of an offense under Section 20.02, 20.03, or 20.04 (regarding kidnapping or unlawful restraint), Penal Code, or an attempt, conspiracy, or solicitation to commit one of those offenses, to make an affirmative finding of fact and enter it in the judgment in the case if the judge determines that the victim or intended victim was younger than 18, rather than 17, years of age at the time of the offense and the actor was not the parent or guardian of the victim.

SECTION 2. Amends Article 42.017, Code of Criminal Procedure, as follows:

Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. Requires the judge, in the trial of an offense under Section 15.031, 21.11, or 43.25 (related to sexual acts with a child), but not 22.011 or 22.021 (related to sexual assault), Penal Code, to make an affirmative finding of fact and enter it in the judgment in the case if the judge determines that at the time of the offense, the victim was a child of at least 13 years of age, the defendant was not more than four years older than the victim and the conviction is based solely on the ages of the defendant and the victim or intended victim at the time of the offense.

SECTION 3. Amends Section 5(g), Article 42.12, Code of Criminal Procedure, to require a judge who places a defendant charged with an offense under Section 15.031 (Criminal Solicitation of a Minor), Penal Code, on community supervision under this section to make an affirmative finding of fact and file a statement of that finding with the papers in the case if the

judge makes certain determinations set forth in this subsection. Makes conforming and nonsubstantive changes.

SECTION 4. Reenacts and amends Article 62.001(5), Code of Criminal Procedure, as renumbered from former Article 62.01(5), Code of Criminal Procedure, and amended by Chapter 1008, Acts of the 79th Legislature, Regular Session, 2005, to conform to an amendment to former Article 62.01(5) by Chapter 1273, Acts of the 79th Legislature, Regular Session, 2005, and further amends that article to add certain felony violations either directly or indirectly involving illegal sexual activity to the definition of “reportable conviction or adjudication.” Makes conforming and nonsubstantive changes.

SECTION 5. Amends Subchapter A, Chapter 62, Code of Criminal Procedure, by adding Article 62.0011, as follows:

Art. 62.0011. CLASSIFICATION OF REPORTABLE CONVICTIONS OR ADJUDICATIONS. (a) Provides that for purposes of this chapter (Sex Offender Registration Program), a reportable conviction or adjudication is a tier one reportable conviction or adjudication if the conviction, deferred adjudication, or adjudication of delinquent conduct, as applicable, is not described by Subsection (b) or (c).

(b) Provides that for purposes of this chapter, a reportable conviction or adjudication is a tier two reportable conviction or adjudication if the conviction or adjudication is based on a violation of certain offenses set forth in this subsection.

(c) Provides that for purposes of this chapter, a reportable conviction or adjudication is a tier three reportable conviction or adjudication if the reportable conviction or adjudication meets certain conditions set forth in this subsection.

(d) Provides that for purposes of this article, an attempt or conspiracy to commit an offense or to engage in conduct based on a violation of an offense is classified as the same tier of reportable convictions or adjudications as the offense or conduct that is attempted or that is the object of the conspiracy.

(e) Provides that for purposes of this article, a reportable conviction or adjudication described by Article 62.001(5)(S) or (T) (regarding a violation of a criminal law by any entity authorized to impose a criminal law described in this subdivision or second violation of indecent exposure) is classified as the same tier of reportable convictions or adjudications as a reportable conviction or adjudication based on a violation of a law of this state that contains elements that are substantially similar to the elements of the offense giving rise to the reportable conviction or adjudication described by Article 62.001(5)(S) or (T).

(f) Provides that, notwithstanding Subsections (a)-(e), a tier one or tier two reportable conviction or adjudication that a person receives subsequent to another reportable conviction or adjudication is classified as the next highest tier of reportable convictions or adjudications.

SECTION 6. Amends Article 62.002, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that this chapter applies only to a reportable conviction or adjudication occurring on or after September 1, 1970, as a result of which, on or after September 1, 1997, a defendant is confined or supervised as set forth in this subsection.

(a-1) Provides that a defendant who, on or after January 1, 1997, is not described by Subsection (a), is covered by the law in effect under Section 8(a), Article 6252-13c.1, Revised Statutes, before that article was redesignated and amended as this chapter by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, and that the former law is continued in effect for that purpose.

SECTION 7. Amends Articles 62.003(a) and (b), Code of Criminal Procedure, to make conforming changes.

SECTION 8. Amends Article 62.005, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsections (a-1) and (b-1), as follows:

(a) Requires the computerized central database that the Department of Public Safety (DPS) is required to maintain to contain certain information concerning each person required to register under this chapter.

(a-1) Requires DPS to design the database in a manner that allows a member of the public to access through the Internet all database information not exempted from public disclosure under Subsection (b) or (b-1).

(b) Provides that information required by DPS under Article 62.051(c)(9) (other information required by DPS) that is not required under this article to be included in the database, and information concerning an arrest of a person that did not result in a conviction, adjudication of delinquent conduct, or grant of deferred adjudication, is excepted from being public information under this section. Deletes existing text excepting a person's driver's license number, telephone number, and any information required by DPS under Article 62.051(c)(7) (name and address of the person's employer) from being public information.

(b-1) Authorizes DPS by rule to exclude certain information from the database with respect to a person required to register under this chapter regarding the person's employer, educational enrollment, and other convictions not involving a person under 18 years of age. Requires DPS by rule to exclude from the database any information not otherwise described in this subsection that DPS, under Article 62.0061, determines must be exempted from public disclosure under federal law.

SECTION 9. Amends Subchapter A, Chapter 62, Code of Criminal Procedure, by adding Articles 62.0051, 62.0052, 62.0061, and 62.0062, as follows:

Art. 62.0051. INTERNET WEBSITE FOR COMPUTERIZED CENTRAL DATABASE. Requires the Internet website through which DPS allows access to public information contained in the computerized central database maintained under Article 62.005 to include certain items set forth in this subsection.

Art. 62.0052. ELECTRONIC MAIL NOTIFICATION SERVICE FOR SCHOOLS AND SCHOOL DISTRICTS. (a) Requires DPS to maintain an electronic mail notification (e-mail) service to which a superintendent of a public school district or the superintendent's designee or an administrator of any private primary or secondary school in this state may electronically subscribe.

(b) Requires the e-mail service maintained under Subsection (a) to allow a subscriber to request for a school or school district notification of the release of certain persons who will enroll in the subscriber's school district and respond to the subscriber as set forth in this subsection.

(c) Requires the Texas Education Agency, a superintendent of a public school district in this state or the superintendent's designee, or an administrator of a private primary or secondary school in this state to provide DPS with any information DPS determines is necessary to implement and operate the notification service under this article.

(d) Authorizes DPS to include in an e-mail sent to a subscriber any public information described by Article 62.005.

Art. 62.0061. UPDATING REQUIREMENTS. (a) Requires DPS periodically to determine whether the federal attorney general has taken any action under the federal Sex Offender Registration and Notification Act (42 U.S.C. Section 16901 et seq.) that

requires, in any manner, DPS to change the contents of the registration form or contents of the database, or the state to amend this chapter as set forth in this subsection

(b) Requires DPS to submit to the governor, the lieutenant governor, the speaker of the house, and the standing committees of each legislative chamber with primary jurisdiction over matters of criminal justice or corrections a written report summarizing any determinations made by DPS under Subsection (a)(2) (regarding statutory changes required by the attorney general) between January 1 of the preceding odd-numbered year and January 1 of the year in which the report is submitted not later than January 15 of each odd-numbered year.

(c) Requires DPS to amend or modify the rules, form, or database, as applicable, not later than the 30th day after the date that DPS determines under Subsection (a)(1) that DPS' rules, registration form, or database must be amended or modified.

Art. 62.0062. REGISTRATION INFORMATION DISSEMINATION. (a) Requires DPS, not later than the third business day after the date DPS receives a registration form under Article 62.051(e), information under Article 62.055(d) (regarding an registrant's change of address) or 62.057(d) (a change in the registrant's employment or educational status), or a verified registration form under Article 62.058(f), immediately to send the information from the form or other source, as applicable, or a copy of the form to certain state and federal governmental entities and any entity requesting such information as set forth in this subsection.

(b) Prohibits an individual, entity, or organization from requesting notification under Subsection (a)(5) (authorizing such requests) more frequently than once every five business days.

SECTION 10. Amends Article 62.009(d), Code of Criminal Procedure, to make a conforming change.

SECTION 11. Amends Articles 62.051(a), (c), (h), and (i), Code of Criminal Procedure, as follows:

(a) Requires the person to satisfy the requirements of this subsection (registration with the local law enforcement authority of any municipality where the person will reside for more than seven days) not later than the third, rather than the seventh, business day after the person's arrival in the municipality or county. Deletes existing text authorizing a person to satisfy these requirements by the first date the local law enforcement authority of the municipality or county by policy allows the person to register or verify registration, as applicable. Makes a conforming change.

(c) Requires the registration form to require each alias used by the person, each home owned or leased by the person or any other address at which the person resides or intends to reside, a current color photograph or, if possible, a current electronic digital image of the person, a photocopy of the driver's license or personal identification certificate of the person, and a complete set of the person's fingerprints and palm prints, an indication as to whether the person is or will be employed, carrying on a vocation, or a student at an educational facility in this state or another state, including a public or private primary or secondary school and a public or private institution of higher education, the name and address of that educational facility, an indication as to whether the person is or will be employed or carrying on a vocation other than such employment or vocational exercise, the name and address of the person's employer or anticipated employer or the address at which the person is or will be carrying on the vocation, as applicable, and a description of any motor vehicle owned or driven by the person, including the license plate number of the motor vehicle, in addition to certain other requirements set forth in this subsection. Makes conforming changes.

(h) Makes conforming changes.

- (i) Makes conforming changes.

SECTION 12. Amends Subchapter B, Chapter 62, Code of Criminal Procedure, by adding Article 62.0521, as follows:

Art. 62.0521. REGISTRATION: CONVICTION OR ADJUDICATION IN ANOTHER JURISDICTION. Requires a person, if the person is residing in this state and is required to register under this chapter as the result of a reportable conviction or adjudication that is based on a violation of an offense under the laws of another jurisdiction as described by Article 62.001(5)(S) or (T) and defined by 42 U.S.C. Section 16911, to register in the other jurisdiction with the law enforcement authority that is identified by DPS as the authority designated by that state to receive registration information.

SECTION 13. Amends Articles 62.053(a) and (e) through (g), Code of Criminal Procedure, as follows:

- (a) Makes conforming changes

(e) Requires a local law enforcement authority to immediately provide written notice described by Subsection (f) to the superintendent of each public school district and to the administrator of any private primary or secondary school located in each district in which the person subject to registration intends to reside, be employed or carry on a vocation, or enroll as a student. Requires the agency immediately to provide such notice to the administrative offices of any public housing authority located in the area in which the person subject to registration intends to reside, be employed or carry on a vocation, or enroll as a student. Deletes existing text requiring such notice to be sent by mail to the superintendent. Makes conforming changes.

- (f) Makes conforming changes.

- (g) Makes conforming changes

SECTION 14. Amends Articles 62.055(a), (c), and (e) through (h), Code of Criminal Procedure, to make conforming changes.

SECTION 15. Amends Articles 62.057(a), (b), and (d), Code of Criminal Procedure, to make conforming changes.

SECTION 16. Amends Article 62.058, Code of Criminal Procedure, by amending Subsections (a) through (c) and adding Subsections (a-1) and (f), as follows:

(a) Requires a person subject to registration under this chapter to report to the person's primary registration authority, as designated by DPS, to verify the information in the person's registration form at certain times set forth in this subsection. Makes conforming deletions.

(a-1) Creates this subsection from existing text of Subsection (a). Provides that for purposes of Subsection (a), a person complies with a requirement that the person register within a period described by Subsection (a)(1) (90 days for a person with a tier three conviction or adjudication) or (a)(2) (180 days for a person with a tier two conviction or adjudication) if the person registers at any time on or after the seventh day before the date the person first registers under this chapter but before the eighth day after that date.

- (b) Makes conforming changes.

(c) Requires the local law enforcement authority also to take a photograph of a person reporting to the authority under this article and include that photograph with the person's verified registration form.

(f) Requires the local law enforcement authority to forward a copy of the person's verified registration form to DPS not later than the third business day after the date a person verifies registration with the authority under Subsection (c) or (d).

SECTION 17. Amends Article 62.101, Code of Criminal Procedure, as follows:

Art. 62.101. EXPIRATION OF DUTY TO REGISTER. (a) Provides that, except as provided by this article and Subchapter I (Early Termination of Certain Persons' Obligation to Register), the duty to register for a person ends as set forth in this subsection. Deletes existing text providing for when the duty to register ends.

(b) Provides that the duty to register for a person otherwise described by Subsection (a)(1) (a person with a tier one conviction or adjudication) ends on the 10th anniversary of the date on which the person is released from a penal institution or discharges community supervision or the court dismisses the criminal proceedings against the person and discharges the person, whichever date is later, if the person, during the period that begins on the first date on which the person is required to register under this chapter and ends on the 10th anniversary described by this subsection meets certain requirements set forth in this subsection related to not having been adjudicated for another offense and successful completion any community supervision or sex offender treatments. Deletes current text providing for the end of such duty. Makes conforming changes.

(c) Provides that the duty to register for a person otherwise described by Subsection (a)(3) (a person with a tier three conviction or adjudication) who is also described by Article 62.0011(c)(1) (over the age of 14 during the commission of an aggravated sexual assault or capital murder offense) or by Articles 62.0011(c)(1) and (e) (a person who has committed a sexual offense against a minor or a second offense of indecent exposure) ends on the 25th anniversary of the date on which the person is released from a penal institution or discharges community supervision or the court dismisses the criminal proceedings against the person and discharges the person, whichever date is later, if the person, during the period that begins on the first date on which the person is required to register under this chapter and ends on the 25th anniversary described by this subsection meets certain requirements set forth in this subsection not having been adjudicated for another offense and successful completion any community supervision or sex offender treatments. Deletes current text providing for the end of such duty. Makes conforming changes.

(d) Provides that a person's duties to register and verify registration under this chapter are suspended for the duration of any period that the person is confined in a penal institution or civilly committed as a sexually violent predator under Chapter 841 (Civil Commitment of Sexually Violent Predators), Health and Safety Code.

SECTION 18. Amends Article 62.102, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Makes conforming changes.

(d) Requires the attorney representing the state in the prosecution of an offense under Subsection (a) (failure to comply with registration requirements under this chapter) timely to notify the attorney general of the United States of any conviction of an offense under that subsection.

SECTION 19. Amends Article 62.151, Code of Criminal Procedure, to provide, that for purposes of this subchapter (Provisions Applicable to Certain Workers and Students), a person is employed or carries on a vocation if the person works or volunteers on a full-time or part-time basis for any period during a calendar year, rather than a consecutive period exceeding 14 days or for an aggregate period exceeding 30 days in a calendar year.

SECTION 20. Amends Articles 62.153(a) and (c), Code of Criminal Procedure, to make conforming changes.

SECTION 21. Amends Article 62.301, Code of Criminal Procedure, by adding Subsection (f), to provide that a person is not eligible to petition the court under this article (Exemption from Registration for Certain Young Adult Sex Offenders) if the person is required to register for a tier three reportable conviction or adjudication, notwithstanding any other provision of this article.

SECTION 22. Amends Subchapter H, Chapter 62, Code of Criminal Procedure, by adding Article 62.358, as follows:

Art. 62.358. INAPPLICABILITY OF SUBCHAPTER TO CERTAIN ADJUDICATIONS. Provides that this subchapter (Exemptions from Registration for Certain Juveniles) does not apply to a person who is or will be required to register for a tier three reportable conviction or adjudication, notwithstanding any other provision of this subchapter.

SECTION 23. Amends Article 62.402(a), Code of Criminal Procedure, to require the Council on Sex Offender Treatment by rule to determine the minimum required registration period under the Sex Offender Registration and Notification Act (42 U.S.C. Section 16901 et seq.), rather than the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program (42 U.S.C. Section 14071), for each reportable conviction or adjudication under this chapter, if the state is to receive the maximum amount of federal money available to a state as described by that law.

SECTION 24. Amends Subchapter A, Chapter 38, Education Code, by adding Section 38.017, as follows:

Sec. 38.017. NOTICE OF SEX OFFENDER ENROLLMENT. Requires, for purposes of verifying the school enrollment of sex offenders, each superintendent of a school district or the superintendent's designee to subscribe to the e-mail service maintained by DPS under Article 62.0052, Code of Criminal Procedure.

SECTION 25. Amends Section 411.0091(b), Government Code, to require the sex offender compliance unit to investigate and arrest individuals determined to have committed a sexually violent offense, as defined by Section 841.002 (Definitions), Health and Safety Code, rather than Article 62.001 (Definitions), Code of Criminal Procedure.

SECTION 26. Repealer:

Articles 62.001(6) (definition of “sexually violent offense”) and 62.054 (Circumstances Requiring Notice to Superintendent or School Administrator), Code of Criminal Procedure;

Section 11 (making application of Article 62.11, Code of Criminal Procedure, as redesignated and amended by Chapter 668, Acts of the 75th Legislature, Regular Session, 1997 (formerly Section 8(a), Article 6252 13c.1, Revised Statutes) prospective), Chapter 668, Acts of the 75th Legislature, Regular Session, 1997;

Section 26 (making application of Article 62.11, Code of Criminal Procedure, as redesignated and amended by Section 11, Chapter 668, Acts of the 75th Legislature, Regular Session, 1997, prospective to September 1, 1997, and making a conforming change), Chapter 1415, Acts of the 76th Legislature, Regular Session, 1999; and

Section 2 (previous amendment to the definition of “reportable conviction or adjudication,” as provided by Article 62.01(5), Code of Criminal Procedure), Chapter 1273, Acts of the 79th Legislature, Regular Session, 2005.

SECTION 27. (a) Requires DPS to have the e-mail service required to be maintained under Article 62.0052, Code of Criminal Procedure, as added by this Act, fully functional and able to receive subscription requests and respond appropriately to those requests not later than January 1, 2008.

(b) Requires each superintendent of a school district in this state or the superintendent's designee to comply with Section 38.017, Education Code, as added by this Act, as soon as possible after the e-mail service required to be maintained under Article 62.0052, Code of Criminal Procedure, as added by this Act, is fully functional and able to receive subscription requests and in no event later than the first day of the 2008-2009 school year.

(c) Provides that the changes in law made by this Act in amending Chapter 62, Code of Criminal Procedure, apply to a person subject to that chapter for an offense or conduct committed or engaged in before, on, or after the effective date of this Act.

SECTION 28. Effective date: September 1, 2007.