

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The most recent numbers available, as of April 2011, from the Department of Public Safety of the State of Texas say that more than 66,000 persons are required to register as a sex offender in Texas. While the registry contains the legal description of the offense committed that requires registration, it provides few details regarding the risk level or danger the offender poses to society.

In Texas, all offenses committed by a person prosecuted as an adult under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, require the offender to register for life. A March 2011 article by the Texas Council of Sex Offender Treatment said that by 2005, the registry was growing at a rate of approximately 100 offenders per week. According to the Legislative Budget Board's *Government Effectiveness and Efficiency Report*, one-fifth of those required to register are considered low-risk and about 4,800 are between the ages of 10 and 17.

With no changes, the sex offender registry will continue to grow at a rate that outpaces the resources available to law enforcement to effectively monitor and supervise those required to register. And, while the registry is maintained by the state, enforcement and supervision duties are the responsibilities of local police, sheriff, and probation and parole departments.

Not all persons required to register in Texas are dangerous, violent, serial criminals, but current state and federal registration requirements create a one-size-fits-all approach to sex offender registration. It is a methodology that will be increasingly difficult to sustain. Critics say that resources used on low-risk offenders could more effectively be deployed to protect the public from dangerous and violent criminals.

S.B. 366 provides greater flexibility in the deployment of law enforcement resources by implementing tools and strategies available under existing state law. The bill provides for the collection of more information to better discern the level of danger a registrant poses to the public.

As proposed, S.B. 1366 amends current law relating to the prosecution and registration of, and regulation concerning, sex offenders in this state.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Council on Sex Offender Treatment (TCSOT) is modified in SECTION 1.004 (Article 62.402, Code of Criminal Procedure (previously Article 64.405, Code of Criminal Procedure)) of this bill.

Rulemaking authority previously granted to TCSOT is rescinded in SECTION 1.004 (Article 62.402, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1.001. 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 21.11 (Indecency with a Child), 22.011 (Sexual

Assault), 22.021 (Aggravated Sexual Assault), or 43.25 (Sexual Performance by a Child), Penal Code, rather than Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11, 22.011, 22.021, or 43.25, Penal Code, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that:

(1) at the time of the offense, the defendant was not more than four years older than the victim or intended victim, rather than the defendant was younger than 19 years of age, and the victim or intended victim was at least 14 years of age, rather than 13 years of age; and

(2) the conviction is based solely on the ages of the defendant and the victim or intended victim at the time of the offense.

SECTION 1.002. Amends Section 5(g), Article 42.12, Code of Criminal Procedure, as follows:

(g) Requires the judge, if a judge places on community supervision under this section a defendant charged with an offense under Section 21.11, 22.011, 22.021, or 43.25, Penal Code, to make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that:

(1) at the time of the offense, the defendant was not more than four years older than the victim or intended victim, rather than the defendant was younger than 19 years of age, and the victim or intended victim was at least 14 years of age, rather than 13 years of age; and

(2) the charge to which the plea is entered under this section is based solely on the ages of the defendant and the victim or intended victim at the time of the offense.

SECTION 1.003. Amends Subchapter A, Chapter 62, Code of Criminal Procedure, by amending Article 62.005 and adding Article 62.0051, as follows:

Art. 62.005. New heading: CENTRAL DATABASE FOR LAW ENFORCEMENT, LICENSING AUTHORITIES, AND INSTITUTIONS OF HIGHER EDUCATION. (a) Requires the Department of Public Safety of the State of Texas (DPS) to maintain a computerized central database for the use of law enforcement authorities, licensing authorities, and public or private institutions of higher education in this state, rather than requires DPS to maintain a computerized database containing the information required for registration under this chapter. Requires that the computerized central database contain, for each person required to register under this chapter, information required for registration under this chapter and any existing numeric risk level assigned to the person under this chapter, rather than authorizing DPS to include in the computerized central database the numeric risk level assigned to a person under this chapter.

(b) Redesignates existing Subsection (c) as Subsection (b). Requires DPS, notwithstanding Chapter 730 (Motor Vehicle Records Disclosure Act), Transportation Code, to maintain in the database any photograph existing for each person required to register under this chapter that is available through the process for obtaining or renewing a personal identification certificate or driver's license under Section 521.103 (Expiration and Renewal Requirements for Certain Sex Offenders) or 521.272 (Renewal of License Issued to Certain Sex Offenders), Transportation Code. Requires DPS to update the photographs in the database annually or as the photographs otherwise become available through the person's renewal of the certificate or license, rather than requires DPS to update the photograph in the database and on the website annually or as the photograph otherwise becomes available through the renewal process for the certificate or license. Deletes existing text requiring DPS to post any photograph of the person on any DPS website related to the database.

Deletes existing Subsection (b) providing that the information contained in the database, including the numeric risk level assigned to a person under this chapter, is public information, with the exception of certain information.

(c) Redesignates existing Subsection (e) as Subsection (c). Requires DPS to provide a licensing authority with notice of each person, rather than any person, required to register under this chapter who holds or seeks a license that is issued by the authority. Requires DPS to provide the notice required by this subsection as the applicable licensing information becomes available through the person's registration or verification of registration.

Deletes existing Subsection (d) requiring a local law enforcement authority to release public information described under Subsection (b) to any person who requests the information from the authority, and authorizing the authority to charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associated with the authority's release of information to the person under this subsection.

(d) Redesignates existing Subsection (f) as Subsection (d). Requires DPS, on the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority, to release to the authority any information that is contained in the central database and pertains to the individual, including information that is not public information under Article 62.0051(b), rather than release any information described by Subsection (a) to the licensing authority.

(e) Redesignates existing Subsection (g) as Subsection (e). Defines, for the purposes of Subsections (c) and (d), rather than Subsections (e) and (f), "license" and "licensing authority."

(f) Redesignates existing Subsection (h) as Subsection (f). Requires DPS, not later than the third day after the date on which the applicable information becomes available through the person's registration or verification of registration or under Article 62.058 (Law Enforcement Verification of Registration Information), to send notice of each person, rather than any person, required to register under this chapter who is or will be employed, carrying on a vocation, or a student at a public or private institution of higher education in this state to:

(1) for an institution in this state:

(A) the authority for campus security for that institution; or
(B) if an authority for campus security for that institution does not exist, the local law enforcement authority of:

(i) the municipality in which the institution is located; or

(ii) the county in which the institution is located, if the institution is not located in a municipality; or

(2) for an institution in another state, any existing authority for campus security at that institution.

(g) Redesignates existing Subsection (i) as Subsection (g). Requires DPS, on the written request of an institution of higher education described by Subsection (f), rather than Subsection (h), that identifies an individual and states that the individual has applied to work or study at the institution, to release to the institution any information that is contained in the central database and pertains to the individual, including information that is not public information under Article 62.0051(b), rather than release any information described by Subsection (a) to the institution.

(h) Redesignates existing Subsection (j) as Subsection (h). Requires DPS, for law enforcement purposes, to release all relevant information that is contained in the central database, rather than the central database described by Subsection (a), including information that is not public information under Article 62.0051(b), rather than Subsection (b), to a peace officer, an employee of a local law enforcement authority, or the attorney general on the request of the applicable person or entity.

Art. 62.0051. PUBLIC WEBSITE; PUBLIC INFORMATION. (a) Provides that this article applies only to information concerning a person required to register under this chapter who:

(1) has not yet been assigned a numeric risk level under the sex offender screening tool described by Article 62.007 (Risk Assessment Review Committee; Sex Offender Screening Tool);

(2) has been assigned a risk level of two or three under the screening tool; or

(3) has been assigned a risk level of one under the screening tool and has committed an offense under Article 62.102 (Failure to Comply with Registration Requirements).

(b) Requires DPS to maintain a website that is accessible to the public at no charge and that contains, for each person described by Subsection (a) who is required to register under this chapter, the information required for registration under this chapter and any existing numeric risk level assigned to the person under this chapter.

(c) Requires DPS to use the most recent information contained in the computerized central database maintained under Article 62.005 (Central Database; Public Information) to complete the public website maintained under this article, except that DPS may not include the following information on the public website:

(1) a person's social security number or driver's license number, or any home, work, or cellular telephone number used by the person;

(2) any online identifiers established or used by the person; or

(3) information that would identify the victim of the offense for which the person is subject to registration.

(d) Requires that the public website maintained under this article contain the following information concerning a person described by Subsection (a) who is required to register under this chapter:

(1) the person's age on the date of each offense or instance of conduct that resulted in a reportable conviction or adjudication;

(2) the person's relationship, if any, to the victim of each offense or instance of conduct that resulted in a reportable conviction or adjudication;

(3) whether the person used or exhibited a deadly weapon, as defined by Section 1.07 (Definitions), Penal Code, while committing any offense or engaging in any instance of conduct that resulted in a reportable conviction or adjudication;

(4) the offense with which the person was originally charged that resulted in a reportable conviction or adjudication or the conduct in which the person was originally alleged to have engaged that resulted in a reportable adjudication;

(5) whether the person is required to register under this chapter as the result of a single reportable conviction or adjudication or of multiple reportable convictions or adjudications;

(6) if the person is required to register as the result of multiple reportable convictions or adjudications, any commonalities between the offenses or instances of conduct that resulted in reportable convictions or adjudications, including commonalities among victim characteristics and the manner or means in which the offenses were committed or in which the conduct was engaged;

(7) the term of, as applicable, the person's community supervision, juvenile probation, imprisonment, or commitment, and whether the person has been released on parole, to mandatory supervision, or under supervision; and

(8) if the person has been released on parole or under supervision, the contact information for the agency or officer supervising the person.

(e) Requires DPS to remove any information to which this article does not apply as soon as practicable after September 1, 2011, or as otherwise required under Subchapter I.

(f) Provides that the information displayed on the public website is public information.

SECTION 1.004. Amends Subchapter I, Chapter 62, Code of Criminal Procedure, as follows:

SUBCHAPTER I. EARLY TERMINATION OF CERTAIN PERSONS' OBLIGATION TO REGISTER; DETERMINATION OF NUMERIC RISK LEVEL FOR CERTAIN PERSONS

Art. 62.401. DEFINITION. Defines, in this subchapter, "council."

Art. 62.402. INDIVIDUAL RISK ASSESSMENT. Redesignates existing Article 62.403 as Article 62.402. (a) Requires the Council on Sex Offender Treatment (TCSOT) by rule to establish, develop, or adopt an individual risk assessment tool or a group of individual risk assessment tools that:

(1) evaluates the criminal history of a person required to register under this chapter; and

(2) seeks to predict:

(A) the likelihood that the person will engage in criminal activity that may result in the person receiving a second or subsequent reportable adjudication or conviction; and

(B) the continuing danger, if any, that the person poses to the community.

(b) Requires TCSOT, on the written request of a person with a single reportable adjudication or conviction, rather than a single reportable adjudication or conviction that appears on the list published under Article 62.402(b), to:

(1) evaluate the person using the individual risk assessment tool or group of individual risk assessment tools established, developed, or adopted under Subsection (a); and

(2) provide to the person a written report detailing the outcome of an evaluation conducted under Subdivision (1).

(c) Provides that an individual risk assessment provided to a person under this subchapter is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

Deletes existing Article 62.402 (Determination of Minimum Required Registration Period) requiring TCSOT by rule to determine the minimum required registration period under 42 U.S.C. Section 14071 (Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program) for each reportable conviction or adjudication under this chapter, if this state is to receive the maximum amount of federal money available to a state as described by that law.

Article 62.403. New heading: MOTION FOR EARLY TERMINATION OR FOR DETERMINATION OF NUMERIC RISK LEVEL. Redesignates existing Article 62.404 as Article 62.403. (a) Authorizes a person required to register under this chapter who has requested and received an individual risk assessment under Article 62.402, rather than Article 62.403, to file with the trial court that sentenced the person for the reportable conviction or adjudication a motion for:

(1) early termination of the person's obligation to register under this chapter; or

(2) if the person has not yet been assigned a numeric risk level under the sex offender screening tool described by Article 62.007, a determination of the person's risk level under that screening tool.

(b) Requires that a motion filed under this article be accompanied by a certified copy of a written report detailing the outcome of an individual risk assessment evaluation conducted under Article 62.402(b)(1), rather than Article 62.403(b)(1).

Deletes existing text requiring that a motion filed under this article be accompanied by a written explanation of how the reportable conviction or adjudication giving rise to the movant's registration under this chapter qualifies as a reportable conviction or adjudication that appears on the list published under Article 62.402(b).

Art. 62.404. New heading: HEARING ON MOTION. Redesignates existing Article 62.405 as Article 62.404. (a) Requires the court, rather than authorizes the court, after reviewing a motion filed with the court under Article 62.403, rather than Article 62.404, to:

(1) deny without a hearing the movant's request, rather than the movant's request for early termination; or

(2) hold a hearing on the motion to determine whether to grant or deny the motion.

(b) Prohibits the court from granting a motion filed under Article 62.403, rather than Article 62.404, if the motion is not accompanied by a certified copy of a written report detailing the outcome of an individual risk assessment evaluation conducted under Article 62.402(b)(1), rather than the documents required under Article 62.404(b). Makes a nonsubstantive change.

(c) Prohibits the court from granting a motion for early termination if, after considering the factors described by Subsection (d), the court determines that an early termination of the movant's obligation to register under this chapter would pose a threat to public safety, rather than the court determines that the reportable conviction or adjudication for which the movant is required to register under this chapter is not a reportable conviction or adjudication for which the movant is required to register for a period that exceeds the minimum required registration period under federal law.

(d) Requires the court, in determining whether to grant or deny a motion for early termination, to consider, if applicable:

(1) the severity of the offense or instance of conduct that resulted in the reportable conviction or adjudication;

(2) the number of victims of the offense or instance of conduct that resulted in the reportable conviction or adjudication;

(3) the movant's compliance with any conditions of community supervision, juvenile probation, parole, mandatory supervision, or release under supervision;

(4) the length of time since the date of the offense or instance of conduct that resulted in the reportable conviction or adjudication;

(5) whether the movant is participating in, or has successfully completed, a sex offender treatment program or another treatment or rehabilitative program, including substance abuse counseling and treatment;

(6) whether the movant has stable employment and housing;

(7) the extent to which the movant has significant ties to the community and has personal support systems;

(8) any risk assessments or evaluations performed with respect to the movant by qualified individuals;

(9) any polygraph examination of the movant concerning the movant's reportable conviction or adjudication;

(10) the age of the movant;

(11) whether the movant has any physical disabilities that prevent the movant from reoffending;

(12) a statement from the victim, taken or given near the date on which the motion for early termination was filed, concerning whether an early termination of the movant's obligation to register under this chapter would cause the victim to feel threatened or otherwise unsafe;

(13) a statement from a correctional officer, peace officer, or treatment provider with knowledge of the movant and the offense or instance of conduct that resulted in the reportable conviction or adjudication; and

(14) any other factors the court determines to be relevant.

(e) Requires the court, in response to a motion to determine a person's numeric risk level, to promptly determine the person's risk level under the sex offender screening tool described by Article 62.007. Authorizes the court, in determining

the person's risk level, to seek the assistance of TSCOT, DPS, or any agency of this state or a political subdivision of this state.

Art. 62.405. COSTS OF INDIVIDUAL RISK ASSESSMENT AND OF COURT. Redesignates existing Article 62.406 as Article 62.405. Provides that a person required to register under this chapter who files a motion for early termination of the person's registration obligation under this chapter is responsible for and is required to remit to the TCSOT and to the court, as applicable, all costs associated with and incurred by the TCSOT in providing the individual risk assessment evaluation described by Article 62.402(b)(1) or associated with and incurred by the court in holding a hearing or performing its other duties under this subchapter.

Art. 62.406. EFFECT OF ORDER GRANTING EARLY TERMINATION. Redesignates existing Article 62.407 as Article 62.406. Provides that if, after notice to the person and to the prosecuting attorney and a hearing, the court grants a motion filed under Article 62.403, rather than Article 62.404, for the early termination of a person's obligation to register under this chapter, notwithstanding Article 62.101 (Expiration of Duty to Register), the person's obligation to register under this chapter ends on the later of:

- (1) the date the court enters the order of early termination; or
- (2) the date the person has paid each cost described by Article 62.405, rather than Section 62.406.

Art. 62.407. EFFECT OF DETERMINATION OF NUMERIC RISK LEVEL BY COURT. (a) Requires that all information concerning the person, if, after notice to the person and to the prosecuting attorney and a hearing, the court assigns a numeric risk level of one to a person required to register under this chapter, be removed from the public website maintained under Article 62.0051 on the later of:

- (1) the date the court assigns the risk level; or
- (2) the date the person has paid each cost described by Article 62.405.

(b) Provides that this article does not apply to a person who has committed an offense under Article 62.102.

Art. 62.408. New heading: APPLICABILITY. (a) Provides that this subchapter applies only to a person who:

- (1) is required to register under this chapter as the result of a single reportable conviction or adjudication; and
- (2) subsequent to being required to register under this chapter has not been:
 - (A) convicted of, or placed on community supervision for, a criminal offense other than a Class C misdemeanor; or
 - (B) adjudicated to have engaged in delinquent conduct that violates, or placed on juvenile probation for, a penal law of the grade of Class B misdemeanor or higher.

(b) Creates this subsection from existing text. Provides that this subchapter does not apply to a person without a reportable conviction or adjudication who is required to register as a condition of parole, release to mandatory supervision, or community supervision.

SECTION 1.005. Amends Chapter 250, Local Government Code, by adding Section 250.007, as follows:

Sec. 250.007. LIMITATIONS ON RESIDENCE OF REGISTERED SEX OFFENDERS. Prohibits the governing body of a municipality or the commissioners court of a county from adopting an ordinance or order that restricts, within that municipality or county, the location of the residence of an individual who is required to register as a sex offender under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure.

ARTICLE 2

SECTION 1.005. Amends Article 62.0061(a), Code of Criminal Procedure, as follows:

(a) Authorizes DPS, on request by a commercial social networking site, to provide to the commercial social networking site:

(1) all public information that is displayed on the public website maintained under Article 62.0051, rather than all public information that is contained in the database maintained under Article 62.005; and

(2) notwithstanding Article 62.0051(c)(2), rather than Article 62.005(b)(2), any online identifier established or used by a person who uses the site, is seeking to use the site, or is precluded from using the site.

SECTION 2.002. Reenacts Article 62.051, Code of Criminal Procedure, as amended by Chapters 661 (H.B. 2153) and 755 (S.B. 689), Acts of the 81st Legislature, Regular Session, 2009, and amends it as follows:

(c) Requires that the registration form shall require:

(1) the person's full name, date of birth, sex, race, height, weight, eye color, hair color, social security number, driver's license number, and shoe size;

(1-a) the address at which the person resides or intends to reside or, if the person does not reside or intend to reside at a physical address, a detailed description of each geographical location at which the person resides or intends to reside;

(1-b) each alias used by the person and any home, work, or cellular telephone number of the person;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;

(5) an indication of each license, as defined by Article 62.005(e), rather than Article 62.005(g), that is held or sought by the person;

(6) an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution;

(7) the identification of any online identifier established or used by the person; and

(8) any other information required by DPS.

SECTION 2.003. Amends Section 38.022(c), Education Code, as follows:

(c) Authorizes a school district to verify whether a visitor to a district campus is a registered sex offender under Chapter 62, Code of Criminal Procedure, with the public website maintained by DPS under Article 62.0051, Code of Criminal Procedure, or any other website or database that is accessible by the district, rather than authorizes a school district to verify whether a visitor to a district campus is a sex offender registered with the computerized central database maintained by DPS as provided by Article 62.005, Code of Criminal Procedure, or any other database accessible by the district.

SECTION 2.004. Amends Section 411.088(b), Government Code, as follows:

(b) Prohibits DPS from charging for processing an electronic inquiry for information described as public information under Article 62.0051, rather than Article 62.005, Code of Criminal Procedure, made through the use of the Internet.

ARTICLE 3

SECTION 3.001. Provides that the changes in law made by this Act in amending Chapter 62, Code of Criminal Procedure, apply to any person who, on or after the effective date of this Act, is required to register under that chapter, regardless of whether the offense or conduct for which the person is required to register occurs before, on, or after the effective date of this Act.

SECTION 3.002. Provides that Article 42.017 and Section 5(g), Article 42.12, Code of Criminal Procedure, as amended by this Act, apply only to a judgment of conviction entered on or after the effective date of this Act or a grant of deferred adjudication made on or after the effective date of this Act.

SECTION 3.003. Provides that, to the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.004. Effective date: September 1, 2011.