

SUBJECT: Monitoring high-risk sex offenders released from prison after sentences

COMMITTEE: Corrections — committee substitute recommended

VOTE: 6 ayes — Madden, Hochberg, McReynolds, Dunnam, Haggerty, Jones

0 nays

1 absent — Oliveira

WITNESSES: For — Andy Kahan, Mayor's Crime Victims Office

Against — Ruth Epstein, ACLU of Texas

On — Michael C. Gougler, Department of Public Safety; Allison Taylor, Council on Sex Offender Treatment; (*Registered, but did not testify*: Paul Jordan, Department of Public Safety Criminal Intelligence Service)

BACKGROUND: Code of Criminal Procedure, art. 62 requires sex offenders who are released from correctional facilities to register their home addresses with local law enforcement authorities and periodically to verify this information. Art. 62.053(a) requires the Texas Department of Criminal Justice (TDCJ) and the Texas Youth Commission (TYC) to assign a numeric risk level to sex offenders due to be released from a correctional facility. Level three is the highest risk level.

Under Health and Safety Code, sec. 841, certain repeat sex offenders and murderers whose crimes are sexually motivated and are released from prison or a state mental health facility can be committed through civil courts to outpatient treatment and supervision. The law authorizes the civil commitment of sexually violent predators. Those who are civilly committed are subject to the state's intensive outpatient sex offender treatment, global positioning system (GPS) tracking, housing and transportation restrictions, child safety zones, mandated polygraphs, substance use testing, registration every 30 days, and case management.

DIGEST: CSHB 430 would require certain high-risk sex offenders being released from prison after finishing their sentences to be monitored.

TDCJ and TYC would be required to use a dynamic risk assessment tool developed by the Council on Sex Offender Treatment to determine the likelihood that certain sex offenders would engage in a predatory act of sexual violence after being released from the institution and to assign to the offender a predatory risk level of low, medium, or high. Persons who were assigned a predatory risk level of high would have to be monitored upon release from prison.

This requirement would apply to people released from a penal institution who are required to register as sex offenders and who are not under the supervision of a juvenile or adult probation department, in TYC, or on adult parole and have not been civilly committed.

The Texas Department of Public Safety (DPS) would be required to give local law enforcement authorities equipment to track the offender. The monitoring systems would track a person's location and periodically give a cumulative report of a tracked person's location. It would not have to track a person in real-time. Local law enforcement authorities would have to verify the authenticity of any geographically verifiable information contained in the sex offender's registration form of someone under the monitoring program. The manufacturer or vendor of the monitoring system would have to train local law enforcement authorities to use the equipment and provide technological support for it.

Offenders who were not indigent would have to pay the cost of the system and would have to pay a monthly fee to local law enforcement authorities to defray their costs of operating the system.

The Council on Sex Offender Treatment would be required to develop or adopt a dynamic risk assessment tool to determine the likelihood that an offender would engage in a predatory act of sexual violence after being released from a penal institution.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007, and would apply only to a person released from a penal institution on or after that date. DPS would be required to have the program fully functional by January 1, 2008.

**SUPPORTERS
SAY:**

CSHB 430 would ensure that the most dangerous sex offenders being released from prison after finishing their sentences were monitored. Currently, sex offenders can be subjected to electronic monitoring by a parole board upon release from prison or by the judge overseeing their probation. However, offenders who are released following completion of their full prison sentences are not subject to electronic monitoring, except for the small number of offenders who go through the state's civil commitment process.

CSHB 430 would set up a process for the most dangerous offenders to be identified and subject to monitoring. The bill would require the use of an objective assessment tool to identify those who would be monitored. The bill would allow law enforcement authorities to keep tabs on the most dangerous offenders, some of whom do not comply with the sex offender registration law.

The state's civil commitment practice only involves about 15 new offenders each year, and it is likely that more offenders are dangerous enough to warrant monitoring. Even if the number of civil commitments increased, there still could be additional offenders unsupervised. Monitoring would not be considered additional punishment but rather a permissible collateral consequence of a sex crime.

Concerns about implementation of the bill or about the specific needs of rural or homeless offenders could be addressed through the rulemaking authority given to DPS. There is no better use of state resources than to protect others in society from sex offenders.

**OPPONENTS
SAY:**

It would be unfair to impose electronic monitoring as a form of punishment on sex offenders who already had paid their debt to society by fully serving their prison terms. These offenders already are subject to the state's sex offender registration laws and the civil commitment statutes.

The state's civil commitment laws are the appropriate venue for handling offenders released from prison who still pose a danger. The Legislature is working to increase funding for the civil commitment program to increase the number of offenders committed from about 15 to about 30 annually. This should capture the most dangerous sex offenders within the civil commitment system. There is a danger that HB 430 could be used to require monitoring of an ever-expanding group of offenders.

CASHB 430 could be very difficult to implement and enforce. The bill has no penalty for noncompliance, so it is unclear how it could be enforced. Some offenders might be homeless and lack a place to plug in monitoring equipment. Others might live in rural areas without the cellular phone services that the monitoring equipment depends on. Even with the training required by the bill, local law enforcement agencies might not be able to adequately operate and interpret the equipment.

The fiscal note estimates that 5 percent of offenders would comply and pay the fees, but even more might not pay, which would mean increased costs for the state. The state might have to spend money replacing equipment lost or throw away by offenders.

NOTES:

The Legislative Budget Board estimates a cost to the state of about \$2.5 million in fiscal 2008-09 from the State Highway Fund. This would include an additional 8 FTEs for DPS.