

BILL ANALYSIS

C.S.H.B. 244
By: Allen
Law Enforcement
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, if the victim of a sex offense is a child younger than 17 years of age, and the basis on which the sex offender is subject to registration is not an adjudication of delinquent conduct and is not a conviction or a deferred adjudication for an offense under Section 25.02 of the Penal Code (Prohibited Sexual Conduct, relating to incest), the law enforcement agency must publish notice in the newspaper of greatest paid circulation in the county in which the sex offender resides.

The legislative intent behind the notification exception for crimes of incest (Section 25.02, Penal Code) was to restrict further humiliation of incest victims, who are most often school-aged children and whose identities would be revealed if information identifying a relative as a sex offender were published in the local paper.

This exception language has been a cause of confusion regarding the circumstances under which local law enforcement agencies must publish in a newspaper information identifying and describing a registered sex offender. The Texas Department of Public Safety (DPS) requested an opinion from the Attorney General on this matter in July of 2002, and later withdrew its request for an opinion on the basis that this matter could be clarified through legislation. C.S.H.B. 244 clarifies which offenses require newspaper publication and notification to schools.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 244 amends Chapter 62 of the Code of Criminal Procedure by adding Article 62.031, "Limitations on Newspaper Publication". The bill clarifies that a local law enforcement authority is prohibited from publishing notice in a newspaper under Article 62.03(e) or 62.04(f) if the basis on which the person is subject to registration is an adjudication of delinquent conduct or if the basis is a conviction or deferred adjudication for an offense under Section 25.02, Penal Code, or the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under Section 25.02, Penal Code, if the victim of the offense was younger than 17 years of age. The bill also prohibits newspaper publication if the person subject to registration is assigned a numeric risk level of one.

C.S.H.B. 244 amends Chapter 62 of the Code of Criminal Procedure by adding Article 62.032, "Circumstances Requiring Notice to Superintendent or School Administrator". The bill requires a local law enforcement authority to provide notice, pursuant to Article 62.03(e) or 62.04(f), to the superintendent and each administrator of every school in the school district in which the registrant resides only if the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for an offense under Section 43.25 (Sexual Performance by a Child) or 43.26 (Possession or Promotion of Child Pornography), Penal Code, or an offense under the laws of another

state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under either of those sections. Local law enforcement authorities are prohibited from providing notice to the superintendent or any administrator if the basis on which the person is subject to registration is an adjudication of delinquent conduct or if the basis is a conviction or deferred adjudication for an offense under Section 25.02 (Prohibited Sexual Conduct, relating to incest), Penal Code, or the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under that section.

C.S.H.B. 244 amends Articles 62.03(e) and 62.04(f) of the Code of Criminal Procedure by removing language relating to the requirement of notice publication in a newspaper regarding a conviction or deferred adjudication for an offense under Section 25.02 of the Penal Code, and replaces it with language requiring a local law enforcement authority to provide this notice in accordance with Articles 62.031 and 62.032, Code of Criminal Procedure, as created by this Act.

EFFECTIVE DATE

This Act takes effect September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 244 modifies the original by adding Articles 62.031 and 62.032 to the Code of Criminal Procedure, which explicitly state the requirements for notice publication regarding sex offender registration for a conviction or deferred adjudication under Sections 25.02 (Prohibited Sexual Conduct), 43.25 (Sexual Performance by a Child), or 43.26 (Possession or Promotion of Child Pornography) of the Penal Code. The original modified Articles 62.03(e) and 62.04(f) of the Code of Criminal Procedure to clarify the requirements for notice publication regarding sex offender registration for a conviction or deferred adjudication under Section 25.02 (Prohibited Sexual Conduct).

The substitute removes language in Articles 62.03(e) and 62.04(f) of the Code of Criminal Procedure relating to the publication of notice regarding a conviction or deferred adjudication under Section 25.02, Penal Code, and replaces it with language that references Article 62.031 and Article 62.032, Code of Criminal Procedure.