

## **BILL ANALYSIS**

C.S.H.B. 867  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Chapter 62 of the Code of Criminal Procedure has become too complex and confusing for all involved in the sex offender registration process to operate as originally intended. Parole and Community Supervision Officers, registration officials at the Department of Public Safety and local law enforcement agencies, prosecutors, defense attorneys, judges, the public and the over 42,000 sex offender registrants who now live in Texas, have found that the complexity of Chapter 62 presents problems.

Sex offender registration was first enacted in Texas in 1991 primarily to alert law enforcement to the presence of sex offenders. Since that time, the program has been amended by every subsequent Texas Legislature. Over the years, the law has been expanded to include public notification to make citizens aware when sex offenders have moved to their neighborhood. Many of the major changes were a result of additional federal requirement placed on the states in return for securing Byrne grant funding. Most of the federal grant conditions are contained in the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, known as the "Wetterling Act." The Wetterling Act and other federal laws control the distribution of funds to the states in the form of criminal justice grants. The violation of grant conditions would put Texas at risk to lose 10% of the annual federal grants it receives in the form of the Edward Byrnes Memorial Fund (Byrne Funds). As a result of the numerous amendments to Chapter 62, there is a concern that the registration program has become too cumbersome and difficult to manage. For this reason, the Speaker created a select interim committee to examine Chapter 62 to determine what changes, if any, are needed to streamline and clarify the provisions.

The committee believes that the complexity of Chapter 62 is due to two primary reasons: lack of internal organization and the excess of confusing details and mandated actions. Without addressing and acting on the issues brought forth in C.S.H.B. 867 the law may become too cumbersome to comply with and enforce.

C.S.H.B 867 establishes a better organized and more user-friendly framework. The bill reorganizes the law into subchapters grouped according to general topics. In addition, it identifies changes needed to help clarify Chapter 62.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and the Texas Department of Public Safety in SECTION 1.01 (Article 62.010, Code of Criminal Procedure) of this bill. in SECTION (Section number of bill or Code) of this bill. It is the committee's opinion that rulemaking authority is expressly granted to the Council on Sex Offender Treatment in SECTION 1.01 (Articles 62.402 and 62.403, Code of Criminal Procedure) of this bill. It is the committee's opinion that rulemaking authority is expressly granted to the Texas Department of Public Safety in SECTION 1.05 (Section 411.1473, Government Code) of this bill.

### **ANALYSIS**

The summary of how H.B. 867 amends and reenacts Section 1.01 Chapter 62, Code of Criminal Procedures is as follows:

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1. H.B. 867 re-organizes Chapter 62 into the following subchapters:

- A. General Provisions
- B. Registration and Verification Requirements; Related Notice
- C. Expiration of Duty to Register; General Penalties for Noncompliance
- D. Provisions Applicable to Certain Workers and Students
- E. Provisions Applicable to Persons Subject to Civil Commitment
- F. Removal of Registration Information
- G. Exemption from Registration for Certain Young Adult Sex Offenders
- H. Exemptions From Registration for Certain Juveniles
- I. Early Termination of Certain Persons' Obligation to Register

Much of this re-organization will not involve any substantive change in the law.

2. Simplifies certain definitions and makes appropriate corrections to cross-references within Chapter 62 and elsewhere by consolidating most definitions in Chapter 62 in one article at the beginning of the chapter; and broadening the definition of “reportable conviction or adjudication” to include various types of juvenile adjudications of delinquent conduct, removing the need to separately define that conduct elsewhere.

3. Adds two recently created crimes to the list of offenses requiring registration as a sex offender for a term of 10 years: (1) Improper Relationship Between Educator and Student (Section 21.12 Penal Code); and (2) Improper Photography or Visual Recording (Section 21.15, Penal Code).

4. Clarifies the effect of a pardon for innocence upon the duty to register. The registrant who is subsequently pardoned for innocence be removed from the registry in the same manner as that for those who successfully appeal their reportable conviction/adjudication.

5. Requires the Department of Public Safety to make available its prior determinations of "substantial similarity" regarding extra-jurisdictional offenses to each prosecuting attorney's office, a cumulative compilation of rulings it has made regarding the applicability of Texas registration law to those offenses.

6. Eliminates the requirement for newspaper publication notice requirement. Allows agencies the option to publish.

7. Expands neighborhood "post card" notification for high-risk offenders to include non-residential addresses (other than post office boxes).

8. Tightens requirements upon registrants who have not established a new address by requiring the registrant to report to their primary registration authority on a weekly basis until they establish a permanent residence for registration purposes.

9. Standardize certain registration and exemption requirements for adults and juveniles by expanding the existing law to dispose of all registrant's registration records once the duty to register has expired.

10. Ensure the collection of DNA samples from all registrants.

11. Expands the risk assessment review committee by adding the Executive Director of the Council on Sex Offender Treatment and a sex offender treatment provider selected by the executive director.

12. Expands general immunity to the Board of Pardons and Paroles, local law enforcement agencies and for all members of the risk assessment committee.

13. Adds language to allow a person to register after the seventh day of an address change if in accordance with local law enforcement policy, if the seven day requirement cannot be accommodated by the law enforcement agency.

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14. Adds language to require that prosecutors are given notice of a motion and hearing for exemption of registration or the granting of early termination of registration.
15. Establishes an option for early termination of certain person's obligation to register.

SECTION 1.02: Amends Chapter 13, Code of Criminal Procedure by adding Article 13.30 as follows:

Art. 13.30 FAILURE TO COMPLY WITH SEX OFFENDER REGISTRATION STATUTE. An offense under Chapter 62 may be prosecuted in any county in which a element of the offense occurs; the county in which the person subject to Chapter 62 last registered, verified registration, or otherwise complies with a requirement of Chapter 62; the county in which the person required to register under Chapter 62 has indicated that the person intends to reside; or any county in which the person required to register under Chapter 62 is places under custodial arrest for an offense subsequent to the person's most recent reportable conviction of adjudication under Chapter 62.

SECTION 1.03: Amends Article 26.13 (h), Code of Criminal Procedure, by stating that the court must substantially comply with Subsection (a) (5) (Requirement of the court to admonish the defendant of the requirement to meet the registration requirements of Chapter 62). The failure of the court to comply with Subsection (a) (5) is not a ground for the defendant to set aside the conviction, sentence, or plea.

SECTION 1.04: Amends Article 44.01, Code of Criminal Procedure entitle the state to appeal an order entered under: (1) Subchapter G or H, Chapter 62 that exempts a person from complying with the requirements of Chapter 62: and (2) Subchapter I, Chapter 62 that terminates a person's obligation to register under Chapter 62.

SECTION 1.05: Amends Subchapter G, Chapter 411, Government Code by adding Section 411.1473 as follows:

Sec. 411.1473. DNA RECORDS OF CERTAIN REGISTERED SEX OFFENDERS.

(a) The section applies only to a person who is required to register under Chapter 62, Code of Criminal Procedure. (b) The department by rule shall require a law enforcement agency serving as a person's primary registration authority under Chapter 62, Code of Criminal Procedure, to: (1) take one or more specimens from a person described by Subsection (a) for the purpose of creating a DNA record; and (2) preserve the specimen and maintain a record of the collection of the specimen.

(c) A law enforcement agency taking a specimen may either send the specimen to the director or send to the director an analysis of the specimen performed by a laboratory chosen by the agency and approved by the director. (d) A law enforcement agency is not required to take and a person is not required to provide a specimen if the person is required to and has provided a specimen under this chapter or other law.

SECTION 1.06: Amends Section 508.186, Government Code, to remove the requirement that a releasee pay to the releasee's supervising officer an amount equal to the cost for providing notice for publication to a newspaper and makes conforming changes.

## ARTICLE II. Conforming Amendments

This article makes conforming amendments.

## ARTICLE III. TRANSITIONS; EFFECTIVE DATE; REPEALERS

SECTION 3.01(a) States that except as provided by Subsection (b) of this section, the changes in law made by this Act in amending Chapter 62, Code of Criminal Procedure, apply to a person subject to Chapter 62, Code of Criminal Procedure, for an offense or conduct

committed or engaged in before, on, or after the effective date of this Act. (b) States to the extent that the changes in law made by this Act to Chapter 62, Code of Criminal Procedure, change the elements of or punishment for conduct constituting a violation of Chapter 62, those changes apply only to conduct engaged in or after the effective date of this Act. Conduct engaged in before the effective date of this Act is governed by the law in effect at the time the conduct was engaged in, and that law is continued in effect for that purpose.

SECTION 3.02 States that the change in law made by this Act in adding Article 13.30. Code of Criminal Procedure, applies only to an offense committed on or after the effective date of this Act.

SECTION 3.03 States that the change in law made by this Act in amending Article 26.13(h) Code of Criminal Procedure, applies only to a plea of guilty or a plea of nolo contendere that is entered on or after the effective date of this Act.

SECTION 3.04 States the change in law made by this Act in repealing Subsections (g) and (h), Section 19, Article 42.12, Code of Criminal Procedure, and in amending Section 508.186, Government Code, applies only to a person who is placed on community supervision or released on parole or mandatory supervision for an offense committed on or after the effective date of this Act.

SECTION 3.05 States the change in law made by this Act in amending Article 44.01, Code of Criminal Procedure, applies only to an appeal brought by the state on or after the effective date of this Act.

SECTION 3.06 States the change in law made by this Act in adding Section 411.1473, Government Code, applies to a person who, for the first time, must register as a sex offender under Chapter 62, Code of Criminal Procedure, on or after the effective date of this Act.

SECTION 3.07 States that Subsections (g) and (h), Section 19, Article 42.12, Code of Criminal Procedure, are repealed.

SECTION 3.08 THIS ACT TAKES EFFECT. September 1, 2005

### **EFFECTIVE DATE**

September 1, 2005

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

In additional to making clarifications, the committee substitute does the following:

- (1) restores current law separating juvenile and adult registration requirements;
- (2) expands the size of the risk assessment review committee by adding to the committee the Executive Director of the Council on Sex Offender Treatment and a sex offender treatment provider selected by the executive director;
- (3) adds local law enforcement, Board of Pardons and Paroles, and members of the risk assessment review committee to Article 62.008. GENERAL IMMUNITY;
- (4) removes language that required notification of certain premises owners, managers, or administrators by registrant when entering those locations;
- (5) restores the current language on registration of persons regularly visiting location;
- (6) adds language that allows for the local law enforcements authority's policy on date of registration if the seven day requirement cannot be accommodated by that law enforcement agency;

(7) adds language to Article 62.351 (SUBCHAPTER H. EXEMPTIONS FROM REGISTRATION FOR CERTAIN JUVENILES) and Article 62.407 (EFFECT OF ORDER GRANTING EARLY TERMINATION) ensuring that the prosecuting attorney is given notice of a motion and a hearing.

(8) adds a provision that would allow those offenders that meet the Wetterling Act, and several other assessment obligations, an option to petition the original court of jurisdiction to be removed from the obligation of registration.