

BILL ANALYSIS

C.S.H.B. 430
By: Madden
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, incarcerated sex offenders who complete their sentences and are not released onto probation, parole, or civil commitment are unmonitored. These offenders are required to register as sex offenders and placing a electronic monitoring unit on these registrants will give the local police a mechanism to verify their residency.

CSHB 430 requires that only the highest risk offenders be subject to electronic monitoring for three years after their release from a penal institution.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the director of the Department of Public Safety in SECTION 2 of this bill.

ANALYSIS

CSHB 430 provides that in addition to assigning to a person a numeric risk level of one, two, or three under Article 62.053(a), Code of Criminal Procedure, before a person who will be subject to registration under Chapter 62, Code of Criminal Procedure, and who will be described by Article 62.063(b) on or after release is due to be released from a penal institution, the Texas Department of Criminal Justice (TDCJ) or the Texas Youth Commission, as applicable, using the dynamic risk assessment tool developed by or adopted by the Council on Sex Offender Treatment under Section 110.164, Occupations Code, shall: (1) determine the likelihood that the person will engage in a predatory act of sexual violence after being released from the institution; and (2) assign to the person a predatory risk level of low, medium, or high.

The bill defines sexually predatory conduct as conduct that is engaged in for the purpose of victimization and is directed toward a stranger, a person of causal acquaintance with whom no substantial relationship exists, or a person with whom a relationship has been established or promoted for the purpose of victimization and violates: Section 21.11(a)(1), 22.011, or 22.021, Penal Code; Section 43.25, Penal Code; Section 20.04(a)(4), Penal Code, if the conduct is committed with the intent to violate or abuse the victim of the conduct sexually; or Section 30.02, Penal Code, if the conduct is punishable under Subsection (d) of that section and is committed with the intent to engage in conduct described by Paragraph (A) or (C), Article 62.0531(a)(2), as added by this Act.

CSHB 430 amends the Code of Criminal Procedure to require that the Department of Public Safety (DPS) implement and coordinate a monitoring system program that tracks the location of persons subject to Article 62.063, Code of Criminal Procedure. Persons subject to Article 62.063 include a person who is released from a penal institution, required to register under Chapter 62 as the result of a reportable conviction or adjudication, has not been civilly committed under Chapter 841, Health and Safety Code, is assigned a risk level of high under Article 62.0531, Code of Criminal Procedure, and is not under the supervision and control of a community supervision and corrections department, the parole division of the Texas Department of Criminal Justice, a juvenile probation office or an agency or entity operating under contract with a juvenile probation office, or the Texas Youth Commission. Such sex offenders are required to participate in the program for three years after their release date.

The bill defines monitoring system, for the purposes of Article 62.063, Code of Criminal Procedure, as an electronic monitoring service, global positioning satellite service, or other

appropriate technological service that is designed to track a person's location. The bill provides that the monitoring system program must require DPS to provide to each local law enforcement authority designated as the primary registration authority under Chapter 62, Code of Criminal Procedure, for a person subject to Article 62.063, Code of Criminal Procedure, monitoring system equipment that is sufficient to track the location of the person. The monitoring system program must also require each local law enforcement authority designated as a person's primary registration authority under Chapter 62, Code of Criminal Procedure, to use the monitoring system equipment provided to verify the authenticity of any geographically verifiable information contained in the registration form of a person subject to Article 62.063, Code of Criminal Procedure, including the person's residence. Additionally, the monitoring system program must require the manufacturer or vendor of the monitoring system equipment provided to a local law enforcement authority to provide training and technological support to the authority with respect to the equipment and track a person's location and periodically provide a cumulative report of a tracked person's location to DPS. The monitoring system does not have to be capable of tracking a person's location in real time or providing a real-time report of a person's location to the DPS.

CSHB 430 also provides that a person who is not indigent and is required to participate in the program is responsible for the cost of the monitoring system and must pay monthly to DPS and the person's primary registration authority the amount that DPS or the person's primary registration authority, as applicable, determines is necessary to defray that entity's cost of operating the system with respect to the person during the previous month.

The bill requires the director of DPS to adopt rules as necessary to implement and coordinate the monitoring system program.

CSHB 430 amends the Occupations Code to require the Council on Sex Offender Treatment to develop or adopt a dynamic risk assessment tool to be used in determining the likelihood that a person confined in a penal institution will engage in a predatory act of sexual violence after being released from the institution. This tool must enable the assignment to a person of a predatory risk level of low, medium, or high.

The bill provides that Articles 62.0531 and 62.063, Code of Criminal Procedure, as added by this Act, apply only to a person who is released from a penal institution on or after January 1, 2008. A person who is released from a penal institution before January 1, 2008, is governed by the law in effect at the time the person is released from the penal institution, and that former law is continued in effect for that purpose.

The bill requires DPS to implement the monitoring system program described by Article 62.063, Code of Criminal Procedure, as added by this Act, so that the program is fully functional not later than January 1, 2008.

EFFECTIVE DATE

Upon passage, or, if the Act does not receive the necessary vote, the Act takes effect September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

HB 430 requires the Texas Department of Criminal Justice (TDCJ) to implement and operate a monitoring system to track the location of certain people described in the bill; CSHB 430 requires TDCJ to implement and *coordinate* such a system.

HB 430 provides that TDCJ may consult with any state agency, political subdivision of this state, or agency of a political subdivision of this state in implementing, operating, and maintaining the program. CSHB 430 does not contain this language.

The substitute changes one of the criteria defining which people are required to participate in the monitoring program. In the original bill, one of these criteria is a person who is assigned a

numeric risk level of three. The substitute changes this to a person who is assigned a predatory risk level of high.

The substitute adds certain requirements not in the original bill for the monitoring system. The substitute provides that the monitoring system must require: DPS to provide to each local law enforcement authority designated as the primary registration authority under Chapter 62, Code of Criminal Procedure, for a person subject to Article 62.063, Code of Criminal Procedure, monitoring system equipment that is sufficient to track the location of the person; each local law enforcement authority designated as a person's primary registration authority under Chapter 62, Code of Criminal Procedure, to use the monitoring system equipment provided to verify the authenticity of any geographically verifiable information contained in the registration form of a person subject to Article 62.063, Code of Criminal Procedure, including the person's residence; and the manufacturer or vendor of the monitoring system equipment provided to a local law enforcement authority to provide training and technological support to the authority with respect to the equipment.

HB 430 provides that a person who is not indigent and is required to participate in the program is responsible for the cost of the monitoring system and must pay monthly to DPS the amount that DPS determines is necessary to defray the cost of operating the system with respect to the person during the previous month. CSHB 430 provides that a person who is not indigent and is required to participate in the program is responsible for the cost of the monitoring system and must pay monthly to DPS *and the person's primary registration authority* the amount that DPS *or the person's primary registration authority, as applicable*, determines is necessary to defray *that entity's* cost of operating the system with respect to the person during the previous month.

HB 430 requires the director of DPS to adopt rules as necessary to implement, operate, and maintain the monitoring system program. CSHB 430 requires the director of DPS to adopt rules as necessary to *implement and coordinate* the monitoring system.

CSHB 430 adds language not in the original bill which defines sexually predatory conduct and requires TDCJ and the Texas Youth Commission, as applicable, in addition to assigning a person a numeric risk level of one, two, or three under Article 62.053(a), Code of Criminal Procedure, before a person who will be subject to registration under Chapter 62, Code of Criminal Procedure, and who will be described by Article 62.063(b) on or after release is due to be released from a penal institution, to use the dynamic risk assessment tool developed by or adopted by the Council on Sex Offender Treatment under Section 110.164, Occupations Code, to determine the likelihood that the person will engage in a predatory act of sexual violence after being released from the institution and assign to the person a predatory risk level of low, medium, or high.

CSHB 430 adds language not in the original bill which requires the Council on Sex Offender Treatment to develop or adopt a dynamic risk assessment tool to be used in determining the likelihood that a person confined in a penal institution will engage in a predatory act of sexual violence after being released from the institution. This tool must enable the assignment to a person of a predatory risk level of low, medium, or high.

The original bill provides that Article 62.063, Code of Criminal Procedure, as added by this Act, applies only to a person who is released from a penal institution on or after January 1, 2008. A person who is released from a penal institution before January 1, 2008, is governed by the law in effect at the time the person is released from the penal institution, and that former law is continued in effect for that purpose. The substitute provides that *Articles 62.0531* and 62.063, Code of Criminal Procedure, as added by this Act, apply only to a person who is released from a penal institution on or after January 1, 2008. A person who is released from a penal institution before January 1, 2008, is governed by the law in effect at the time the person is released from the penal institution, and that former law is continued in effect for that purpose.