

BILL ANALYSIS

C.S.H.B. 920
By: Eissler
Public Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, a person who is convicted or adjudicated to have engaged in delinquent misconduct for serious offenses, and who enrolls in a public school, is placed in the regular classroom setting unless there is a specific provision in Chapter 37, Texas Education Code, that allows or requires a school district to place the student in a disciplinary alternative education program. Students who have been paroled or who are on probation for such an offense are regularly placed back in the regular classroom setting after release from any confinement related to the offense. This creates a situation where a student adjudicated or convicted of a serious felony, such as one for which the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, is placed back in the regular classroom without any additional supervision that may be afforded by placement in a disciplinary alternative education program.

Additionally, despite provisions of Section 15.27, Code of Criminal Procedure, there has been a breakdown of communication to school districts with regard to students who have been required to register as sex offenders under Chapter 62, Code of Criminal Procedure, and who have subsequently enrolled in the public school.

This bill is intended to clarify and strengthen the law relating to placement by public schools of students who are registered sex offenders and the notification requirements concerning certain offenses committed by students.

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

Note: Unless otherwise specified, statutory references in this Bill ANALYSIS are to the Education Code.

This bill amends Chapter 37, Education Code, by adding Subchapter I relating to the placement of registered sex offenders. In such subchapter, "board of trustees" includes the board's designee. Subchapter I applies to a student who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, and does not apply to a student who is no longer required to register as a sex offender under Chapter 62, Code of Criminal Procedure, including a student who receives an exemption from registration under Subchapter H, Chapter 62, Code of Criminal Procedure, or a student who receives an early termination of the obligation to register under Subchapter I, Chapter 62, Code of Criminal Procedure.

The bill provides that, notwithstanding any provision of Subchapter A of Chapter 37, on receiving notice under Article 15.27, Code of Criminal Procedure, or Chapter 62, Code of Criminal Procedure, that a student is required to register as a sex offender under that chapter, a school district shall remove the student from the regular classroom and determine the appropriate placement of the student in the manner provided by this subchapter. A school district shall place a student to whom Subchapter I applies and who is under any form of court supervision, including probation, community supervision, or parole, in the appropriate alternative education program as provided by Section 37.309 for at least one semester. If a student transfers to another school district during the student's mandatory placement in an alternative education program, the district to which the student transfers may require the student to complete an additional semester

in the appropriate alternative education program without conducting a review of the student's placement for that semester under Section 37.306; or count any time spent by the student in an alternative education program in the district from which the student transfers toward the mandatory placement requirement. A school district may place a student to whom Subchapter I applies and who is not under any form of court supervision in the appropriate alternative education program as provided by Section 37.309 for one semester or in the regular classroom. The district may not place the student in the regular classroom if the district board of trustees determines that the student's presence in the regular classroom threatens the safety of other students or teachers, will be detrimental to the educational process, or is not in the best interests of the district's students. At the end of the first semester of a student's placement in an alternative education program under Section 37.304 or 37.305, as added by this bill, the school district board of trustees shall convene a committee to review the student's placement in the alternative education program. The committee must be composed of a classroom teacher from the campus to which the student would be assigned were the student not placed in an alternative education program the student's parole or probation officer or, in the case of a student who does not have a parole or probation officer, a representative of the local juvenile probation department, an instructor from the alternative education program to which the student is assigned, a school district designee selected by the board of trustees, and a counselor employed by the school district. The committee by majority vote shall determine and recommend to the school district board of trustees whether the student should be returned to the regular classroom or remain in the alternative education program. If the committee recommends that the student be returned to the regular classroom, the board of trustees shall return the student to the regular classroom unless the board determines that the student's presence in the regular classroom threatens the safety of other students or teachers, will be detrimental to the educational process, or is not in the best interests of the district's students.

The bill provides that if the committee recommends that the student remain in the alternative education program, the board of trustees shall continue the student's placement in the alternative education program unless the board determines that the student's presence in the regular classroom does not threaten the safety of other students or teachers, will not be detrimental to the educational process, and is not contrary to the best interests of the district's students. If, after receiving a recommendation from the committee, the school district board of trustees determines that the student should remain in an alternative education program, the board shall before the beginning of each school year convene the committee to review, in the manner provided by this bill, the student's placement in an alternative education program.

The bill provides that the placement under Subchapter I of a student with a disability who receives special education services must be made in compliance with the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.). The review of the placement of a student with a disability who receives special education services may be made only by a duly constituted admission, review, and dismissal committee. The admission, review, and dismissal committee may request that the board of trustees convene a committee described by Section 37.306(a) to assist the admission, review, and dismissal committee in conducting the review.

The bill provides that, except as provided by Section 37.304(b), a school district shall determine whether to place a student to whom Subchapter I applies and who transfers to the district in the appropriate alternative education program as provided by Section 37.309, as added by this bill, or in a regular classroom. The school district shall follow the procedures specified under Section 37.306, as added by this bill, in making the determination.

The bill provides that, except as provided below in this paragraph, a school district shall place a student who is required by the board of trustees to attend an alternative education program under this subchapter in a disciplinary alternative education program. A school district shall place a student who is required by the board of trustees to attend an alternative education program under Subchapter I in a juvenile justice alternative education program if the memorandum of understanding entered into between the school district and juvenile board under Section 37.011(k) provides for the placement of students to whom this subchapter applies in the juvenile justice alternative education program, or a court orders the placement of the student in a juvenile justice alternative education program.

The bill provides that a juvenile justice alternative education program is entitled to funding for a student who is placed in the program under Subchapter I in the same manner as a juvenile justice alternative education program is entitled to funding under Section 37.012 for a student who is expelled and placed in a juvenile justice alternative education program for conduct for which expulsion is permitted but not required under Section 37.007.

The bill provides that a student or the student's parent or guardian may appeal a decision by a school district board of trustees to place the student in an alternative education program under this Subchapter I by requesting a conference among the board of trustees, the student's parent or guardian, and the student. The conference is limited to the factual question of whether the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure. If the school district board of trustees determines at the conclusion of the conference that the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, the student is subject to placement in an alternative education program in the manner provided by this Subchapter I. A decision by the board of trustees is final and may not be appealed.

The bill provides that Subchapter I does not waive any liability or immunity of a governmental entity or its officers or employees, or create any liability for or a cause of action against a governmental entity or its officers or employees.

The bill provides that, to the extent of any conflict between a provision of this Subchapter I and a provision of Subchapter A of Chapter 37, Subchapter I prevails.

The bill amends Article 15.27, Code of Criminal Procedure, by amending Subsections (b) and (c) and adding Subsections (a-1) and (j) to read as follows: (a-1) The superintendent or a person designated by the superintendent in the school district may send to a school district employee having direct supervisory responsibility over the student the information contained in the confidential notice under Subsection (a) if the superintendent or the person designated by the superintendent determines that the employee needs the information for educational purposes or for the protection of the person informed or others. (b) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication and whether the student is required to register as a sex offender under Chapter 62. Oral notification must be given within 24 hours of the time of the order or on the next school day. The superintendent shall, within 24 hours of receiving notification from the office of the prosecuting attorney, notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded and a statement of whether the student is required to register as a sex offender under Chapter 62. (c) A parole, probation, or community supervision office, including a community supervision and corrections department, a juvenile probation department, the paroles division of the Texas Department of Criminal Justice, and the Texas Youth Commission, having jurisdiction over a student described by Subsection (a), (b), or (e) who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred shall within 24 hours of learning of the student's transfer or reenrollment notify the new school officials of the arrest or referral in a manner similar to that provided for by Subsection (a) or (e)(1), or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2). The new school officials shall, within 24 hours of receiving notification under this subsection, notify all instructional and support personnel who have regular contact with the student. (j) The notification provisions of this section concerning a person who is required to register as a sex offender under Chapter 62 do not lessen the requirement of a person to provide any additional notification prescribed by that chapter.

The bill provides that Subsection (d), Article 15.27, Code of Criminal Procedure, is repealed.

The bill provides that Subchapter I, Chapter 37, Education Code, as added by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed

before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The original bill and the substitute bill are significantly different, both in terms of the offenders to whom the bills apply and the provisions of law modified by the bills. Due to the substantial differences between the bills, the clearest way to illustrate the differences is to describe the provisions of the original bill in detail.

The original bill is captioned "relating to the protection of public safety through the placement of certain offenders who are public school students in alternative education programs and the provision of information relating to certain offenders."

The original bill provides that, except as provided below in this paragraph, and notwithstanding Section 25.001, a student may not enroll at a public school campus if the student has been: convicted of an offense described by Section 3g, Article 42.12, Code of Criminal Procedure; granted deferred adjudication community supervision for an offense described by Section 3g, Article 42.12, Code of Criminal Procedure, adjudicated to have engaged in delinquent conduct that violates an offense described by Section 3g, Article 42.12, Code of Criminal Procedure, or granted deferred prosecution for conduct that violates an offense described by Section 3g, Article 42.12, Code of Criminal Procedure. Notwithstanding Subchapter A, Chapter 37, a student to whom this provision applies and who is not exempt from the compulsory school attendance requirements under Section 25.086 shall enroll in a disciplinary alternative education program under Section 37.008 or a juvenile justice alternative education program under Section 37.011.

The original bill provides that each superintendent of a school district or the superintendent's designee shall subscribe to the electronic mail notification service maintained by the Department of Public Safety (department) under Article 62.0051, Code of Criminal Procedure, for each zip code any portion of which is located in the district.

The original bill amends Subchapter A, Chapter 62, Code of Criminal Procedure by adding the following provisions: The department shall maintain an electronic mail notification service to which any person in this state may electronically subscribe. The electronic mail notification service must allow a subscriber to request for a zip code notification of the release from a penal institution or placement on deferred adjudication community supervision, community supervision, or juvenile probation of a person who expects to reside or resides in that zip code and is required to register under this chapter, and any change in address of a person who resides in that zip code and is required to register under this chapter, and respond to a subscriber via electronic mail not later than the third business day after the date the department receives notice of an event described above in this paragraph. The department may include in an electronic mail notification sent to a subscriber any public information described by Article 62.005, Code of Criminal Procedure.

The original bill provides that the department shall have the electronic mail notification service required to be maintained under Article 62.0051, Code of Criminal Procedure, as added by the bill, fully functional and able to receive subscription requests and respond appropriately to those requests not later than January 1, 2008.

The original bill provides that Section 25.0012, Education Code, as added by the bill, applies only to an offense committed or conduct engaged in on or after the effective date of this Act. An offense committed or conduct engaged in before the effective date of this Act is governed by the law in effect at the time the offense was committed or conduct was engaged in, and the former law is continued in effect for that purpose. For purposes of this section, an offense was

committed or the conduct was engaged in before the effective date of this Act if any element of the offense or conduct occurred before that date.

The original bill provides that each superintendent of a school district in this state or the superintendent's designee shall comply with Section 38.017, Education Code, as added by this Act, as soon as possible after the electronic mail notification service required to be maintained under Article 62.0051, Code of Criminal Procedure, as added by this Act, is fully functional and able to receive subscription requests and in no event later than the first day of the 2008-2009 school year.

The substitute bill differs so significantly from the original bill that a provision-to-provision comparison of the two bills is unworkable. For purposes of comparison, the provisions of the substitute bill, which are set forth in detail in the ANALYSIS section above, are hereby incorporated by reference into this COMPARISON OF ORIGINAL TO SUBSTITUTE section.