

BILL ANALYSIS

Senate Research Center

S.B. 6
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Children are especially vulnerable to victimization. With so many children using the Internet on a daily basis, predators can easily find and exploit them. For predators, the Internet is a new, effective, and more anonymous way to seek out and groom children for criminal purposes. According to the Crimes Against Children Research Center, one in seven youths received a sexual solicitation over the Internet during the last year.

Currently, judges are authorized to provide concurrent sentences for intoxication, assault, and intoxication manslaughter, as well as certain sexual offenses. However, concurrent sentences cannot be given to a person convicted of on-line solicitation of a minor. A person who commits sexually explicit on-line communication with a minor who is 14 to 16 years old is punishable by a state jail felony, which is a sentence of six months to two years in the State Jail Division. Current law also provides that a person who commits on-line sexual solicitation of a minor who is 14 to 16 years old is punishable by a third degree felony, which is a sentence of two to 10 years of confinement.

S.B. 6 increases the penalty for sexually explicit on-line communication with a minor who is 14 to 16 years old from a state jail felony to a third degree felony, increases the penalty for on-line sexual solicitation of a minor who is 14 to 16 years old from a third degree felony to a second degree felony, and provides that sentences for certain offenses arising out of the same criminal offense may run concurrently or consecutively. The bill directs the Crime Stoppers Advisory Council to emphasize programs targeted at detecting unregistered sex offenders. The bill requires that the attorney general establish an Internet service provider database and establishes requirements relating to the preservation of certain records and information and penalties for violation of said requirements. Finally, the bill provides for special placement of public school students who are required to register as sex offenders.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 15.27, Code of Criminal Procedure, by adding Subsections (a-1) and (j) and amending Subsections (b) and (c), as follows:

(a-1) Authorizes the superintendent or a person designated by the superintendent in the school district to send to a district employee having direct supervisory responsibility over the student the information contained in the confidential notice under Subsection (a) (regarding the arrest of a student for certain offenses) 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) Requires the office of the prosecuting attorney acting in a case involving a 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, to 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 (Sex Offender Registration Program). Requires the superintendent, within 24 hours of receiving notification from the office of the prosecuting attorney, to notify all instructional and support personnel who have regular contact with the student. Makes a conforming change.

(c) Requires a parole, probation, or community supervision office, including a community supervision and corrections department, a juvenile probation department, the pardons and paroles division of the Texas Department of Criminal Justice, and the Texas Youth Commission, having jurisdiction over a certain student 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, within 24 hours of learning of the student's transfer or reenrollment, to notify the new school officials of the arrest or referral in a manner set forth in this subsection. Makes a conforming change.

(j) Provides that 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.

SECTION 2. Amends Title 1, Code of Criminal Procedure, by adding Chapter 24A, as follows:

CHAPTER 24A. RESPONDING TO SUBPOENAS AND CERTAIN OTHER COURT ORDERS ; PRESERVING CERTAIN INFORMATION

SUBCHAPTER A. RESPONDING TO SUBPOENAS AND CERTAIN OTHER COURT ORDERS

Art. 24A.001. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter applies only to a subpoena, search warrant, or other court order that relates to the investigation or prosecution of a criminal offense under Section 33.021 (Online Solicitation of a Minor), Penal Code, and is served on or issued with respect to an Internet service provider that provides service in Texas.

Art. 24A.002. RESPONSE REQUIRED; DEADLINE FOR RESPONSE. (a) Sets forth certain responses required of an Internet service provider not later than the 10th day after the date on which the Internet service provider is served with or otherwise receives a subpoena, search warrant, or other court order described by Article 24A.001, except as provided by Subsection (b).

(b) Provides that, as soon as practicable, and in no event later than the second business day after the date the Internet service provider is served with or otherwise receives a subpoena, search warrant, or other court order described by Article 24A.001, the Internet service provider is required to fully comply with the subpoena, search warrant, or order if it is indicated that full compliance is necessary to address a situation that threatens a person with death or other serious bodily injury.

(c) Provides that, for the purposes of Subsection (a)(1), full compliance with the subpoena, warrant, or order includes, to the extent permitted under federal law, producing or providing all documents or information requested under the subpoena, warrant, or order, or providing electronic access to all documents or information requested.

Art. 24A.003. DISOBEYING SUBPOENA, WARRANT, OR ORDER. Authorizes the punishment in any manner provided by the law of an Internet service provider that disobeys a subpoena, search warrant, or other court order described by Article 24A.001 and that was not excused under Article 24A.002(a)(2).

[Reserves Articles 24A.004-24A.050 for expansion.]

SUBCHAPTER B. PRESERVING CERTAIN INFORMATION

Art. 24A.051. PRESERVING INFORMATION. (a) Requires an Internet service provider providing service in Texas to take all steps necessary to preserve all records or other potential evidence in a criminal trial that is in the possession of the Internet service provider on written request of a state or federal law enforcement agency and pending the issuance of a subpoena or other court order described by Article 24A.001.

(b) Requires an Internet service provider, subject to Subsection (c), to preserve information under Subsection (a) for a period of 90 days after the date the Internet service provider receives the written request described by Subsection (a).

(c) Requires an Internet service provider to preserve information under Subsection (a) for the 90-day period immediately following the 90-day period described by Subsection (b) if the requesting law enforcement agency in writing requests an extension of the preservation period.

SECTION 3. Amends Chapter 37, Education Code, by adding Subchapter I, as follows:

SUBCHAPTER I. PLACEMENT OF REGISTERED SEX OFFENDERS

Sec. 37.301. DEFINITION. Defines "board of trustees."

Sec. 37.302. APPLICABILITY. Provides that this subchapter 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 (Exemptions From Registration for Certain Juveniles), Chapter 62, Code of Criminal Procedure, or a student who receives an early termination of the obligation to register under Subchapter I (Early Termination of Certain Persons' Obligation to Register), Chapter 62, Code of Criminal Procedure.

Sec. 37.303. REMOVAL OF REGISTERED SEX OFFENDER FROM REGULAR CLASSROOM. Requires a school district (district), on receiving notice under Article 15.27 (Notification to Schools Required), 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, to remove the student from the regular classroom and determine the appropriate placement of the student in the manner provided by this subchapter, notwithstanding any provision of Subchapter A (Alternative Settings for Behavior Management).

Sec. 37.304. PLACEMENT OF REGISTERED SEX OFFENDER WHO IS UNDER COURT SUPERVISION. (a) Requires a district to place a student to whom this subchapter applies and who is under any form of court supervision, including probation, community supervision, or parole, in the appropriate alternative education program (program) as provided by Section 37.309 for at least one semester.

(b) Authorizes the district to which a student transfers, if the student transfers to another district during the student's mandatory placement in a program under Subsection (a), to require the student to complete an additional semester in the appropriate program without conducting a review of the student's placement for that semester under Section 37.306, or to count any time spent by the student in a program in the district from which the student transfers toward the mandatory placement requirement under Subsection (a).

Sec. 37.305. PLACEMENT OF REGISTERED SEX OFFENDER WHO IS NOT UNDER COURT SUPERVISION. Authorizes a school district to place a student to whom this subchapter applies and who is not under any form of court supervision in the appropriate program as provided by Section 37.309 for one semester or in the regular classroom. Prohibits the district from placing the student in the regular classroom if the

district board of trustees (board) makes certain determinations regarding the student's presence in the regular classroom.

Sec. 37.306. REVIEW OF PLACEMENT IN ALTERNATIVE EDUCATION PROGRAM. (a) Requires the board to convene a committee at the end of the first semester of a student's placement in a program under Section 37.304 or 37.305 to review the student's placement in the program. Sets forth the composition of the committee.

(b) Requires the committee by majority vote to determine and recommend to the board whether the student should be returned to the regular classroom or remain in the program.

(c) Requires the board, if the committee recommends that the student be returned to the classroom, to return the student to the regular classroom unless the board makes certain determinations regarding the student's presence in the regular classroom.

(d) Requires the board, if the committee recommends that the student remain in the program, to continue the student's placement in the program unless the board makes certain determinations regarding the student's presence in the regular classroom.

(e) Requires the board, before the beginning of each school year, if, after receiving a recommendation under Subsection (b), the board determines that the student should remain in a program, to convene the committee described by Subsection (a) to review, in the manner provided by Subsections (b), (c), and (d), the student's placement in a program.

Sec. 37.307. PLACEMENT AND REVIEW OF STUDENT WITH DISABILITY. (a) Requires the placement under this subchapter of a student with a disability who receives special education services to be made in compliance with the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(b) Authorizes the review under Section 37.306 of the placement of a student with a disability who receives special education services to be made only by a duly constituted admission, review, and dismissal committee. Authorizes the admission, review, and dismissal committee to request that the board convene a committee described by Section 37.306(a) to assist the admission, review, and dismissal committee in conducting the review.

Sec. 37.308. TRANSFER OF REGISTERED SEX OFFENDER. Requires a district to determine whether to place a student to whom this subchapter applies and who transfers to the district in the program as provided by Section 37.309 or in a regular classroom, except as provided by Section 37.304(b). Requires the district to follow the procedures specified under Section 37.306 in making the determination.

Sec. 37.309. PLACEMENT IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OR JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.

(a) Requires a district to place a student who is required by the board to attend a program under this subchapter in a disciplinary alternative education program, except as provided by Subsection (b).

(b) Requires a district, under certain circumstances, to place a student who is required by the board to attend a program under this subchapter in a juvenile justice alternative education program.

Sec. 37.310. FUNDING FOR REGISTERED SEX OFFENDER PLACED IN JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM. Entitles a juvenile justice alternative education program to funding for a student who is placed in the program under this subchapter in the same manner as a juvenile justice alternative education program is entitled to funding under Section 37.012 (Funding of Juvenile

Justice Alternative Education Programs) 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 (Expulsions for Serious Offenses).

Sec. 37.311. CONFERENCE. (a) Authorizes a student or the student's parent or guardian to appeal a decision by a board to place the student in a program under this subchapter by requesting a conference among the board, the student's parent or guardian, and the student. Provides that 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.

(b) Provides that a student is subject to placement in a program in the manner provided by this subchapter if the board 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.

(c) Provides that a decision by the board under this section is final and prohibits the decision from being appealed.

Sec. 37.312. LIABILITY. Provides that this subchapter 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.

Sec. 37.313. CONFLICTS OF LAW. Provides that this subchapter prevails to the extent of any conflict between a provision of this subchapter and a provision of Subchapter A.

SECTION 4. Amends Subchapter B, Chapter 402, Government Code, by adding Section 402.0281, as follows:

Sec. 402.0281. INTERNET SERVICE PROVIDER DATABASE. (a) Requires the attorney general to establish a computerized database containing contact information for all Internet service providers providing service in Texas. Sets forth the specific contact information to be included.

(b) Requires the attorney general, at the request of a district attorney, criminal district attorney, county attorney, law enforcement agency of Texas, or local law enforcement agency, to allow the requestor access to the database to expedite the information-gathering process of a criminal investigation conducted by the requestor concerning an offense under Section 33.021, Penal Code.

SECTION 5. Amends Section 414.005, Government Code, as follows:

Sec. 414.005. DUTIES. Requires the Crime Stoppers Advisory Council (council) to create specialized programs targeted at detecting specific crimes or types of crimes, including at least one program that encourages individuals to report unregistered sex offenders and financially rewards those individuals if their report leads or substantially contributes to the arrest or apprehension of an unregistered sex offender. Requires the council to encourage, advise, and assist crime stoppers organizations in the implementation of any programs created under Subdivision (6).

SECTION 6. Amends Section 3.03(b), Penal Code, authorizing sentences to run concurrently or consecutively if the accused is found guilty of more than one offense arising out of the same criminal episode if each sentence is for a conviction of an offense under Section 33.021 (Online Solicitation of a Minor).

SECTION 7. Amends Section 33.021(f), Penal Code, to provide that an offense under Subsection (b) is a felony of the third degree, rather than a state jail felony, except if the minor is younger than 14 years or whom the actor believes to be younger than 14 years of age at the time of the commission of the offense, then the offense is a felony of the second degree. Provides that an offense under Subsection (c) is a felony of the second, rather than third, degree.

SECTION 8. Repealer: Article 15.27(d) (regarding confidential notification being sent to school district employees), Code of Criminal Procedure.

SECTION 9. Makes application of Subchapter I, Chapter 37, Education Code, as added by this Act, prospective.

SECTION 10. Requires the attorney general to ensure that the database required under Section 402.0281, Government Code, as added by this Act, is fully operational not later than April 1, 2008. Requires the attorney general to begin to allow requesting parties access to that database not later than June 1, 2008.

SECTION 11. Makes the application of Sections 3.03(b) and 33.021(f), Penal Code, as amended by this Act, prospective to September 1, 2007.

SECTION 12. Effective date: September 1, 2007.