

BILL ANALYSIS

S.B. 689
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The solicitation of children online is a problem that is becoming increasingly pervasive and of great concern. With the ever-increasing use and development of cyber technology, sexual predators who look for victims on the Internet or social networking sites have new ways of preying upon children in Texas. For example, the Attorney General's Fugitive Unit recently arrested a convicted sex offender who accessed a social networking site in violation of his parole conditions due to using both his home computer and mobile phone to access his social networking account.

Because current law does not require convicted sex offenders to disclose any electronic identification information, law enforcement authorities often have difficulty in identifying individuals who are accessing the Internet or social networking sites in violation of their parole conditions. This bill seeks to address that problem by giving law enforcement authorities and social networking sites additional information that can be used to track sex offenders online.

S.B. 689 amends current law relating to restrictions on the use of the Internet by sex offenders and to the reporting, collection, and exchange of information regarding those offenders, and provides a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety in SECTION 4 (Article 62.0061, Code of Criminal Procedure) of this bill.

ANALYSIS

SECTION 1. Amends Article 42.12, Code of Criminal Procedure, by adding Section 13E, as follows:

Sec. 13E. PROHIBITIONS ON INTERNET ACCESS FOR CERTAIN SEX OFFENDERS. (a) Provides that this section applies only to a person who is required to register as a sex offender under Chapter 62 (Sex Offender Registration Program), by court order or otherwise, and:

- (1) is convicted of or receives a grant of deferred adjudication community supervision for a violation of Section 21.11 (Indecency with a Child), 22.011(a)(2) (relating to an offense if a person intentionally or knowingly commits certain sexual acts against a child), 22.021(a)(1)(B) (relating to an offense if a person intentionally or knowingly commits certain sexual acts against a child), 33.021 (Online Solicitation of a Minor), or 43.25 (Sexual Performance by a Child), Penal Code;
- (2) used the Internet or any other type of electronic device used for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62; or
- (3) is assigned a numeric risk level of three based on an assessment conducted under Article 62.007 (Risk Assessment Review Committee; Sex Offenders Screening Tool).

(b) Requires the court as a condition of community supervision, if the court grants community supervision to a defendant described by Subsection (a), to prohibit the defendant from using the Internet to access material that is obscene as defined by Section 43.21 (Definitions), Penal Code; access a commercial social networking site, as defined by Article 62.0061(f) (relating to the definition of commercial social networking site); communicate with any individual concerning sexual relations with an individual who is younger than 17 years of age; or communicate with another individual the defendant knows is younger than 17 years of age.

(c) Authorizes the court to modify at any time the condition described by Subsection (b)(4) (relating to a restriction on certain sex offenders from communicating with another individual the defendant knows is younger than 17 years of age) if the condition interferes with the defendant's ability to attend school or become or remain employed and consequently constitutes an undue hardship for the defendant; or the defendant is the parent or guardian of an individual who is younger than 17 years of age and the defendant is not otherwise prohibited from communicating with that individual.

SECTION 2. Amends Article 62.001, Code of Criminal Procedure, by adding Subdivision (11) to define "online identifier."

SECTION 3. Amends Article 62.005, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (j), as follows:

(b) Provides that the information contained in the database, including the numeric risk level assigned to a person under this chapter, is public information, with the exception of any information regarding the person's social security number or driver's license number, or any home, work, or cellular telephone number of the person; that is described by Article 62.051(c)(7) or required by the Department of Public Safety (DPS) under Article 62.051(c)(8); or that would identify the victim of the offense for which the person is subject to registration.

(j) Requires DPS, for law enforcement purposes, to release all relevant information described by Subsection (a) (regarding the requirement for DPS to maintain a computerized central database containing the information required for registration under Chapter 62, Code of Criminal Procedure), including information that is not public information under Subsection (b), to a peace officer, an employee of a local law enforcement authority, or the attorney general on the request of the applicable person or entity.

SECTION 4. Amends Subchapter A, Chapter 62, Code of Criminal Procedure, by adding Article 62.0061, as follows:

Art. 62.0061. REQUEST FOR ONLINE IDENTIFIERS BY SOCIAL NETWORKING SITES. (a) Authorizes DPS, on request by a commercial social networking site, to provide to the commercial networking site all public information that is contained in the database maintained under Article 62.005 (Central Database; Public Information); and notwithstanding Article 62.005(b)(2) (relating to a restriction on a defendant from access to a commercial social networking site, as defined by Article 62.0061(f)), any online identifier established or used by a person who uses the site, is seeking to use the site, or is precluded from using the site.

(b) Requires DPS by rule to establish a procedure through which a commercial social networking site is authorized to request information under Subsection (a), including rules regarding the eligibility of commercial social networking sites to request information under Subsection (a). Requires DPS to consult with the attorney general, other appropriate state agencies, and other appropriate entities in adopting rules under this subsection.

(c) Provides that a commercial social networking site or the site's agent is authorized to use information received under Subsection (a) only to prescreen persons seeking to use the site or preclude persons registered under this chapter from using the site; and is prohibited from using any information received under Subsection (a) that the networking site obtained solely under Subsection (a) in any manner not described by Subdivision (1) (relating to the acceptable uses for information received under Subsection (a))

(d) Provides that a commercial social networking site that uses information received under Subsection (a) in any manner not described by Subsection (c)(1) (relating to the acceptable uses for information received under Subsection (a)) or that violates a rule adopted by DPS under Subsection (b) is subject to a civil penalty of \$1,000 for each misuse of information or rule violation. Requires a commercial social networking site that is assessed a civil penalty under this article to pay, in addition to the civil penalty, all court costs, investigative costs, and attorney's fees associated with the assessment of the penalty. Requires that a civil penalty assessed under this subsection be deposited to the compensation to victims of crime fund established under Subchapter B (Crime Victims' Compensation), Chapter 56 (Rights of Crime Victims).

(e) Provides that this article does not create a private cause of action against a commercial social networking site, including a cause of action that is based on the site identifying, removing, disabling, blocking, or otherwise affecting the user of a commercial social networking site, based on a good faith belief that the person is required to register as a sex offender under this chapter or federal law; or failing to identify, remove, disable block, or otherwise affect the user of a commercial social networking site who is required to register as a sex offender under this chapter or federal law.

(f) Defines "commercial social networking site."

SECTION 5. Amends Article 62.051(c), Code of Criminal Procedure, to require that the registration form require certain information including each alias used by the person and any home, work, or cellular telephone number of the person, and the identification of any online identifier established or used by the person. Makes nonsubstantive changes.

SECTION 6. Amends Article 62.053(f), Code of Criminal Procedure, to make conforming changes.

SECTION 7. Amends Article 62.055(g), Code of Criminal Procedure, to make conforming changes.

SECTION 8. Amends Subchapter B, Chapter 62, Code of Criminal Procedure, by adding Article 62.0551, as follows:

Art. 62.0551. CHANGE IN ONLINE IDENTIFIERS. (a) Requires a person required to register under this chapter, if the person changes any online identifier included on the person's registration form or establishes any new online identifier not already included on the person's registration form, not later than the later of the seventh day after the change or establishment or the first date the applicable authority by policy allows the person to report, to report the change or establishment to the person's primary registration authority in the manner prescribed by the authority.

(b) Requires a primary registration authority that receives information under this article to forward information in the same manner as information received by the authority under Article 62.055 (Change of Address).

SECTION 9. Amends Articles 62.057(a) and (b), Code of Criminal Procedure, as follows:

(a) Requires a supervising officer, if the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising a person

subject to registration under this chapter receives information to the effect that the person's status has changed in any manner that affects proper supervision of the person, including certain information changes, including a change in online identifiers, to promptly notify the appropriate local law enforcement authority or authorities of that change.

(b) Requires a person subject to registration under this chapter, not later than the later of the seventh day after the date of the change or the first date the applicable authority by policy allows the person to report, to report to the local law enforcement authority designated as the person's primary registration authority by DPS any change in the person's online identifiers, or certain other information.

SECTION 10. Amends Subchapter F. Chapter 508, Government Code, by adding Section 508.1861, as follows:

Sec. 508.1861. PROHIBITIONS ON INTERNET ACCESS FOR CERTAIN SEX OFFENDERS. (a) Provides that this section applies only to a person who, on release, will be required to register as a sex offender under Chapter 62, Code of Criminal Procedure, by court order or otherwise, and:

(1) is serving a sentence for an offense under Section 21.11, 22.011(a)(2), 22.021(a)(1)(B), 33.021, or 43.25, Penal Code;

(2) used the Internet or any other type of electronic device for Internet access to commit the offense or engage in the conduct for which the person is required to register under Chapter 62, Code of Criminal Procedure; or

(3) is assigned a numeric risk level of three based on an assessment conducted under Article 62.007, Code of Criminal Procedure.

(b) Requires the parole panel as a condition of parole or mandatory supervision, if the parole panel releases on parole or to mandatory supervision a person described by Subsection (a), to prohibit the releasee from using the Internet to access material that is obscene as defined by Section 43.21, Penal Code; access a commercial social networking site, as defined by Article 62.0061(f), Code of Criminal Procedure; communicate with any individual concerning sexual relations with an individual who is younger than 17 years of age; or communicate with another individual the releasee knows is younger than 17 years of age.

(c) Authorizes the parole panel to modify at any time the condition described by Subsection (b)(4) (relating to a prohibition against a defendant communicating with another individual the releasee knows is younger than 17 years of age) if the condition interferes with the releasee's ability to attend school or become or remain employed and consequently constitutes an undue hardship for the releasee; or the releasee is the parent or guardian of an individual who is younger than 17 years of age and the releasee is not otherwise prohibited from communicating with that individual.

SECTION 11. Provides that the change in law made by this Act in adding Section 13E, Article 42.12, Code of Criminal Procedure, and Section 508.1861, Government Code, applies only to a person who is placed on community supervision or released on parole or to mandatory supervision on or after the effective date of this Act.

SECTION 12. Requires DPS to implement Article 62.051(c), Code of Criminal Procedure, as amended by this Act, and Articles 62.005(j) and 62.0061, Code of Criminal Procedure, as added by this Act, as soon as practicable after September 1, 2009, but not later than January 1, 2010.

SECTION 13. Provides that the change in law made by this Act in amending Chapter 62, Code of Criminal Procedure, applies to any person who, on or after January 1, 2010, is subject to

registration under that chapter, regardless of whether the offense or conduct for which the person is subject to registration occurred before, on, or after that date.

SECTION 14. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.