

BILL ANALYSIS

H.B. 3001
By: Thompson
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that states across the country are dealing with sexually violent predators in an increasingly conservative manner by committing the predators to inpatient treatment. The parties note that while the implementation of the outpatient civil commitment program in Texas is the first innovative type of civil commitment in the country, the current standard for civil commitment allows many dangerous sex offenders to remain unmonitored. H.B. 3001 seeks to provide for the monitoring of these sexually violent predators through a monitoring system that will be implemented by the Department of Public Safety.

RULEMAKING AUTHORITY

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

ANALYSIS

H.B. 3001 amends the Code of Criminal Procedure to require a court, in a trial of a certain specified offense, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the court determines by a preponderance of the evidence that the defendant is highly likely to commit a subsequent offense that is one of the specified offenses during a time at which the defendant is not confined in a penal institution. The bill makes this requirement applicable to the following offenses: continuous sexual abuse of a young child or children; indecency with a child if the actor engages in sexual conduct with the child or causes the child to engage in sexual conduct; sexual assault; aggravated sexual assault; sexual performance by a child; aggravated kidnapping if the actor inflicts bodily injury on the victim or violates or abuses the victim sexually and the conduct is committed with the intent to violate or abuse the victim of the conduct sexually; and first-degree burglary committed with the intent to commit an offense previously listed, excluding aggravated kidnapping.

H.B. 3001 requires the Department of Public Safety (DPS) to implement and coordinate a monitoring system program that tracks the location of a person who is discharged from a penal institution, has been convicted of an offense for which the judgment in the case contains an affirmative finding that the person is a high-risk sex offender under the bill's provisions, and is not under the supervision of the parole division of the Texas Department of Criminal Justice or has not been civilly committed as a sexually violent predator. The bill requires such a person to participate in any such monitoring system implemented by DPS. The bill requires a monitoring system to require the following:

- DPS to provide, for each person required to participate in the monitoring system, monitoring system equipment, sufficient to track the person's location, to the local law enforcement authority designated as the person's primary registration authority under the sex offender registration program;
- the local law enforcement authority designated as a person's primary registration authority under the sex offender registration program to use the provided monitoring

system equipment to verify the authenticity of any geographically verifiable information, including residence, contained in a sex offender registration form submitted by the person to that authority; and

- the manufacturer or vendor of the provided monitoring system equipment to provide training and technological support to the local law enforcement authority with respect to that equipment.

The bill requires a monitoring system that is part of a monitoring system program to track a person's location and periodically provide a cumulative report of the tracked person's location to DPS. The bill establishes that a monitoring system is not required to be capable of tracking a person's location in real time or providing a real-time report of the person's location to DPS. The bill makes a person who is not indigent and who is required to participate in a monitoring system program responsible for the cost of the monitoring system and requires such a person monthly to pay to the person's primary registration authority and to DPS the amount that the primary registration authority or DPS, as applicable, determines is necessary to defray that entity's cost of operating the system with respect to the person during the preceding month. The bill requires the public safety director of DPS to adopt rules as necessary to implement and coordinate the monitoring system program.

H.B. 3001 authorizes a person required to register in the monitoring system program for certain high-risk sex offenders, beginning on the 10th anniversary of the person's discharge from a penal institution, completion of a parole period, or participation in an early release from supervision program, whichever is latest, but not more than once during each calendar year, to petition the court having jurisdiction over the person's case for an order exempting the person from participating in a monitoring system program. The bill authorizes the court, after a hearing on the petition, to issue an order exempting the person from participating in a monitoring system program if the court finds by a preponderance of the evidence that an exemption would not constitute a threat to public safety. The bill specifies that an order exempting a person from participating in a monitoring system program does not expire, except that a court is authorized to withdraw the order if after the order is issued the person is convicted of an offense listed in provisions of law relating to the sex offender registration program or, at a hearing, the court finds by a preponderance of the evidence that the continuation of an exemption order would constitute a threat to public safety. The bill creates the third-degree felony offense of failing to comply with monitoring requirements. The bill makes it an offense for a person required to participate in a monitoring system program to fail to participate in a monitoring system program. The bill authorizes DPS to solicit and accept a gift, grant, or donation from any source, including a foundation, private entity, governmental entity, or institution of higher education, to help fund the implementation of a monitoring system program. The bill defines "department," "monitoring system," and "penal institution" and provides for the meaning of "local law enforcement authority" by reference.

H.B. 3001 requires DPS, not later than September 15, 2011, to issue a request for qualifications or proposal for the purchase of any monitoring system equipment necessary to operate a monitoring system program under the bill's provisions. The bill authorizes DPS to consider only those responses to such a request that are received from a manufacturer of the monitoring system equipment and to only contract with such a manufacturer. The bill requires a selection process through which DPS chooses a manufacturer with which to contract to include side-by-side test comparisons of all products being considered. The bill prohibits DPS, in awarding a contract, from giving greater weight to cost considerations than to considerations concerning the product test results, product reliability and functionality, and the protection of public safety.

EFFECTIVE DATE

September 1, 2011.