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# RESEARCH ORGANIZATION

*session focus*

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## State studies how best to deter sex crimes

Numerous proposals to curb the incidence of sex crimes have been filed with the 74th Legislature. These proposals have been prompted by some highly publicized incidents, particularly those involving child victims, new policies being tried in other states and a general desire to get tough with sex offenders and reduce crime.

Texas had about 24,000 adult sex offenders under state supervision in 1994. About 12,000 were in prison, about 4,900 were on parole or mandatory supervision, at least 6,900 were on probation and about 2,100 were under deferred adjudication, which is a deferral of a judicial decision, similar to probation. About 1,790 juveniles were referred to the juvenile justice system for sex offenses in 1993. Virtually all these sex offenders were male.

This Session Focus Report examines proposals to amend laws dealing with sex offenders including community notification and registration, tougher penalties for sex offenders, civil commitment of sex offenders after their prison terms, changes in treatment of sex offenders and the creation of child safety zones.

### Sexual offenses

The Texas Penal Code lists numerous crimes that have a sexual element, but discussions of sex offenses often focus on three: sexual assault (formerly rape, Penal Code sec. 22.011), aggravated sexual assault (a sexual assault involving such factors as a child victim, causing or threatening serious injury or death of a victim or use of a weapon, Penal Code 22.021) and indecency with a child (various acts of child molestation, Penal Code 21.11). Other sex offenses include prohibited sexual conduct (incest, Penal Code 25.02), sexual performance by a child (43.25), possession or promotion of child pornography (43.26), indecent exposure (21.08), aggravated kidnapping with the intent to sexually abuse (20.04(a)(4)) and aggravated burglary with the intent to commit a felony (30.02 (d)(2)).

All of these offenses are felonies except for indecent exposure, which is a Class B misdemeanor. First-degree

felonies currently are punishable by five to 99 years in prison and a maximum fine of \$10,000; second-degree felonies, by two to 20 years in prison and a maximum fine of \$10,000; and third-degree felonies, by two to 10 years in prison and a maximum fine of \$10,000.

Aggravated sexual assault and indecency with a child are among the violent offenses listed in the Code of Criminal Procedure art. 42.12 (3g(a)) for which a judge may not give probation and for which offenders must serve at least half their sentences, with a minimum of two years, before being eligible for parole.

### Convictions for sex offenses

**Adults.** Texas prisons held about 12,140 persons convicted of one of the sex offenses listed above, as of late 1994. This number constituted about 13 percent of the prison population. One study showed offenders convicted of sexual assault and indecency with a child to be about 4 percent of a sample of about 58,000 offenders convicted in seven large counties in 1991.

About 8,380 of the known sex offenders in prison in 1994 were serving time for a sex offense; the rest had a history of sex offenses, but were in prison for another type of offense. Of 4,900 sex offenders on parole or mandatory supervision after a prison term, about 2,900 were under special supervision for sex-offender cases.

A 200-person, in-prison treatment program for men with a history of sex offenses against children was started by the Texas Department of Criminal Justice (TDCJ) in 1990. About 160 persons have completed the program. Another 700 to 1,000 prisoners participate in volunteer-led, mutual-help groups for sex offenders and about 180 participate in prison-aftercare programs, according to Parents Anonymous, the group that trains the volunteer leaders and coordinates the groups.

**Juveniles.** Approximately 1,790 juveniles were referred to local probation departments for sex offenses in 1993. About 6.5 percent, or 116 youths, were



committed to the Texas Youth Commission (TYC), compared to an average of about 2 percent of the referrals for juvenile cases in general.

TYC had about 220 sex offenders among its total population of about 2,500 in February 1995. About half were receiving treatment designed specifically to assist sex offenders, either in a 32-bed program at the Giddings State School, a 42-bed program at the Brownwood State School, or through other in-patient or out-patient programs. Local juvenile probation departments provided treatment to 967 juvenile sex offenders in 1993.

### 1991 sex offender registration law

Registration of the addresses of convicted sex offenders who have been released from custody is being required in about 40 states, including Texas. Since 1991 Texas has required registration of persons convicted of, or given deferred adjudication for, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct, sexual performance by a child and possession or promotion of child pornography or who receive a fourth conviction for indecent exposure. They must register with local law enforcement authorities within seven days of arriving in a locality or changing address. The information is forwarded to the Department of Public Safety (DPS). Offenders must report as long as they are on parole or probation, until they turn 21 or until a charge is dismissed under deferred adjudication. It is a Class A misdemeanor to fail to register, and repeat offenses are a third-degree felony.

Through December 1994 DPS had registration information on about 6,300 offenders. About 67 percent of those notified by the prison system or a court of registration requirements had complied, DPS estimated.

## PROPOSALS

Sex-crime bills filed in the 74th Legislature propose such steps as community notification of sex-offender whereabouts; increased penalties for certain sex crimes; civil commitment following prison terms; increased treatment options, including voluntary castration; and creation of child safety zones.

**Community notification.** One proposal would require notification of residents when certain sex offenders move into their neighborhood. Either local law enforcement or the sex offender would be required to notify neighborhood residents and institutions such as schools and child care centers or to post a notice in a public place, such as a courthouse, stating the offenders' crime, physical description and at least a partial address.

Community notification is being used in at least four states, but notification laws have been struck down or are under challenge in other states.

Supporters of community notification argue that it allows persons living near known sex offenders, who often are repeat offenders, to protect themselves and their children. A community's right to information overrides the privacy interests of the sex offender, supporters say. Notification laws can deter crimes, supporters say.

Notification requirements can be tailored to fit the crime and the risk involved, supporters say. Safeguards such as posting only partial addresses can prevent vigilantism and harassment, they argue. Notification should be required for all offenders who commit sex crimes, even incest, because possible dangers to the community are more important than protecting victims' privacy, supporters say.

Opponents of community notification say the laws infringe on offenders' constitutional right to privacy and make it virtually impossible for persons who have paid their debt to society to rebuild their lives. Community notification amounts to punishment *after* a sentence and can lead to vigilantism and cases of mistaken identity, opponents say. Publication requirements could impede offenders' rehabilitation and damage victims, particularly incest victims, and other innocent parties, opponents say.

Sex offenders do not commit crimes just in their own neighborhoods, and notification laws can promote a false sense of security for some communities, opponents say. Only a fraction of sex offenders would be identified, since many offenses are never reported and many others do not result in convictions, opponents argue.

**DNA database.** Creating a statewide DNA database is being proposed as a way to link convicted sex offenders to physical evidence gathered at crime scenes. DNA, or deoxyribonucleic acid, is the genetic material of organisms and can be used to identify an individual from fluids such as blood or semen. A DNA database could cost about \$1.4 million to start and about \$700,000 annually to maintain, according to one estimate.

Many of the statistics in this report were supplied by the state's Council on Sex Offender Treatment, 512-463-2323, in Austin.

Bills relating to sex offenses can be found in the Legislative Information System (LIS) under these search codes: S0099, Sexual Offenders; and I0170, Crimes Against Persons.



Supporters of the proposal say law enforcement officers could compare database DNA against DNA from physical evidence gathered after a crime. A DNA database would not impinge on offenders' rights any more than the statewide fingerprint database. A powerful law enforcement tool such as a DNA registry also could deter some crimes and would be especially useful since sex offenders tend to repeat their crimes, supporters say.

Opponents say a DNA database could be misused by those outside of law enforcement and might cause law officers to unreasonably focus investigations on those in the database. DNA technology is not foolproof, they warn. The state should not spend millions of dollars to develop a DNA database before guidelines for a national registry are established, especially since federal monies may be made available for state DNA registries, some opponents say.

### Tougher penalties

Proposals to increase penalties for sex offenders include:

- ◆ Increasing confinement time for those convicted of sexual assault by adding that offense to those listed in Code of Criminal Procedure art. 42.12 (3g(a)) for which a judge may not give probation and for which offenders must serve at least half their sentence, and no less than two years, before being eligible for parole. (Aggravated sexual assault and indecency with a child are already "3g" offenses.)
- ◆ Creating a penalty of life in prison without parole for repeat sexual offenders.
- ◆ Increasing the possible penalty for some sexual offenses to "life in prison," which currently means a minimum of 15 years including good conduct time or, if the offense is listed in Code of Criminal Procedure art. 42.12 (3g(a)), at least 30 years with no good conduct time. Indecency with a child, sexual assault and aggravated sexual assault are included in one life-in-prison proposal.
- ◆ Eliminating the possibility of parole, deferred adjudication or mandatory supervision for repeat sex offenders.
- ◆ Eliminating the possibility of a probated sentence for a sex offense committed while a person is on probation for another sex offense.

Supporters of tougher penalties say sex offenses are inadequately punished and that repeat offenders in

particular should be kept off the streets longer. These offenses are a serious threat to the most vulnerable members of society. Others contend that a sex offense should remain on a person's criminal record, which certain punishments, such as deferred adjudication, do not provide. Letting courts order life-without-parole sentences for some sex offenders would keep dangerous offenders away from society longer, say supporters of tougher penalties.

Opponents of tougher penalties say they merely divert attention and resources from treatment needs, and result in untreated offenders going back to society. The Penal Code penalty scheme adopted in 1993 was carefully developed and should not be distorted, others argue. Probation or deferred adjudication should remain as options for difficult-to-prove cases, as when the victims are children, and a plea bargain must be struck, some argue. Life-without-parole is not an option in murder cases, and it would be inappropriate in the case of sex offenses, others argue.

### Civil confinement after prison

Some propose that the state continue to confine sex offenders *after* they complete their court-ordered sentences. Under one proposal courts would be allowed to commit "sexually violent predators" to mental health facilities or other mental health services after release.

Supporters of the proposals say the state needs to keep dangerous sex offenders off the streets and to treat them as it does the mentally ill who are judged to be a danger to themselves or society. Due process procedures would require fair and thorough hearings to examine the offender's mental state and the risk presented to the public and require annual reviews of commitments, supporters of the proposals say.

Only about 20 of the approximately 2,700 sex offenders released in Washington state from February 1990 through December 1993 were committed under the state's 1990 sexual predator law, which has been upheld by the state's Supreme Court, supporters point out.

Opponents say civil commitment of sex offenders would allow the state to unfairly punish sex offenders after they have served their sentences and violate the offenders' constitutional rights. Mental health facilities should not be used for criminal justice purposes, others argue. Civil commitment proposals use vague criteria such as "mental illness" or "mental abnormality" that could be abused and would offer no way for offenders to demonstrate that they are "cured" and be released, opponents say. Studies in Massachusetts and New York demonstrate the unpredictability of sex offenders' future



behavior, opponents say. Washington state's sexual predator law is still being challenged, and the state supreme court, which upheld the law in 1993, found several constitutional flaws in the statute.

**Treatment for sex offenders**

Expanded treatment options, including voluntary chemical or surgical castration, have been proposed. At present specialized treatment for sex offenders in Texas prisons is voluntary and limited to 200 offenders at a time for a two-year program. Sex offenders on probation or parole are often required to attend treatment, which may be subsidized by parole or probation departments.

**Therapy.** Some proposals call for providing more psychologically and behaviorally based treatment, or for requiring such treatment, while sex offenders are in prison or otherwise under state supervision. Most sex offenders who are caught eventually are released, and without treatment they are likely to commit new crimes, treatment supporters say. Research shows that incarceration alone does not change behavior, they argue. Studies indicate that specialized treatment reduces recidivism rates, according to the Council on Sex Offender Treatment. Treatment costs are small in comparison to costs created by new offenses — law enforcement investigation, court costs, incarceration, treatment, parole supervision and victim-related costs such as medical expenses and treatment, supporters say.

Opponents say sex offenders should be punished harshly and that the state is ill-equipped to rely on treatment as an alternative to harsher penalties, since the state's 200-person prison treatment program already has a waiting list.

**Castration.** Proposals have been made to allow some sex offenders to volunteer to be surgically or chemically castrated. Castration, also called orchiectomy, is the surgical removal of one or both testicles, the organs that produce the male hormone testosterone, which can influence behavior. One proposal would require psychological and psychiatric tests and the approval of the offender and his spouse, if any, before

castration. The proposal also would prohibit castration from being used as a condition of probation or parole or as consideration in sentencing. Drugs such as Depo Provera, which counteract testosterone and create "chemical castration," could be used under some proposals.

Castration would be a medical treatment option to help sex offenders control their sexual compulsions and not a punishment, supporters say. Safeguards such as only allowing volunteers to be castrated and requiring screening and counseling would ensure that castration is used wisely, supporters say, as in Europe, where it has successfully reduced the rate of repeat offenses.

Opponents say castration is a primitive method of treating sex offenders and a castration law could lead to its use as punishment or a prerequisite to sentencing, opponents say. Opponents also say the effects of castration can be at least partially undone by testosterone supplements and implants, and that some offenders commit sex crimes despite castration.



**Child safety zones**

Child safety zones have been proposed as a way to keep probationers, parolees and those on mandatory supervision for sex offenses against children away from children at such places as schools, playgrounds, youth centers, public swimming pools and video arcades. One proposal would make it a requirement of probation or parole that sex offenders stay out of child safety zones.

Safety zone supporters note that law enforcement officers often know that sex offenders are in parks or school areas but are powerless to do anything if they are not breaking the law. Since probation and conditions vary, a new statewide provision is needed, they say.

Opponents say conditions on probationers and parolees, and such laws as the loitering statutes, can be used to keep children safe. Prohibiting sex offenders from certain areas could make it difficult for them to reintegrate into work and family, some say.

— By Kellie Dworaczyk

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