
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1221 **Hearing Date:** April 17, 2018
Author: Gaines
Version: April 10, 2018 Amended
Urgency: No **Fiscal:** Yes
Consultant: GC

Subject: *Schools: trespassing*

HISTORY

Source: Author

Prior Legislation: SB 1128 (Alquist), Ch. 337, Stats. of 2006
SB 326 (Beall), Ch. 279, Stats. of 2013

Support: California District Attorneys Association; California State Sheriffs' Association;
Nevada City Police Officers Association

Opposition: California Public Defenders Association

PURPOSE

The purpose of this bill is to expand the existing limitations on sex offenders entering K-12 school grounds without the written permission of the school administration to include preschools.

Existing law requires any person who has been convicted of specified sexual offenses to register as a sex offender, for a specified period, while residing in California. The person must register with the chief of police of the city in which he or she is residing, or the sheriff of the county if he or she is residing in an unincorporated area or city that has no police department. (Penal Code § 290)

Existing law prohibits a registered sex offender from being in any school building or upon any school grounds without lawful business thereon and without written permission from the chief administrative official of that school. A person violating this prohibition is guilty of a misdemeanor. Multiple violations of this misdemeanor offense result in mandatory minimum jail time of up to 90-days in the county jail on a third or subsequent offense. (Penal Code § 626.81)

Existing law authorizes the chief administrative official of a school to grant a person who is a registered sex offender and not a family member of a pupil who attends that school, permission to come into a school building or upon the school grounds to volunteer at the school, provided that at least 14 days prior to the first date for which permission has been granted, the chief administrative official notifies the parent or guardian of each child attending the school that a person who is required to register as a sex offender has been granted permission to come into a

school building or upon school grounds, the date or dates and times for which permission has been granted, and his or her right to obtain information regarding the person from a designated law enforcement entity. (Penal Code § 626.81)

Existing law prohibits a registered sex offender from residing within 2,000 feet of any public or private school, or park where children regularly gather. (Penal Code § 3003.5)

Existing law prohibits sex offender registrants, whose sex crime was against a victim under age 16, from working as an employee or volunteer with minors if the registrants would be working with minors directly and in an unaccompanied setting on more than an incidental or occasional basis or would have supervisory or disciplinary power over the child. If a registrant's crime was not against a victim under age 16, the registrant must notify the employer or volunteer organization of his status as a registrant. Failure to comply with this law is a misdemeanor offense. (Penal Code § 290.95)

Existing law specifies when a school district or county office of education requests from the Department of Justice (DOJ), records involving criminal offenses committed by a prospective volunteer, the school district or county office of education may request that the DOJ provide subsequent arrest notification service and specifies that the DOJ shall comply with that request. (Education Code § 35021.2)

Existing law provides parents and guardians with certain rights, including the right to volunteer their time and resources for the improvement of school facilities and programs under the direct supervision of district employees, including but not limited to providing assistance in the classroom with the approval of and under the direct supervision of the teacher. In adopting policies that outline the manner in which parents or guardians, school staff, and pupils may share responsibility for the intellectual, physical, emotional, and social development and well-being of pupils, school district governing boards must specify the manner in which the parents and guardians of pupils may support the learning environment, including volunteering in their children's classrooms or for other activities at the school. School districts are not authorized to permit participation by a parent or guardian if it conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction. (Education Code § 51101)

Existing law defines a chief administrative officer as "the principal of the school, a person who possesses a standard supervision credential or a standard administrative credential and who is designated by the principal, or a person who carries out the same functions as a person who possesses a credential and who is designated by the principal." (Pen. Code, § 626, subd. (a)(5)(B).)

This bill expands the prohibition on sex offenders entering school grounds, without first obtaining written permission from a school official, to include any public or private pre-school.

COMMENTS

1. Need for This Bill

According to the author:

Existing law makes it a misdemeanor for any person who is required to register as a sex offender to come into any school building or upon any school grounds without certain permissions. "School" for these purposes is defined as public or private elementary school; junior high school; 4-year high school; senior high school; adult school; evening high school; and technical school.

Preschools are excluded from the current definition. By adding preschools, we will provide those students with the same level of protection as received by their older peers.

2. Sex Offenders on School Grounds

Current law prohibits registered sex offenders from being on a school campus *without lawful business and written permission* of the school principal, including parents. Current law provides parents with certain rights, including the right to volunteer at their child's school. School districts are not authorized to permit participation by a parent or guardian if it conflicts with a valid restraining order, protective order, or order for custody or visitation issued by a court of competent jurisdiction. Under current law "schools" include any public or private:

- Elementary schools
- Junior high schools
- 4-year high schools
- Senior high schools
- Adult schools
- Evening high schools
- Technical schools

This bill expands the prohibition to include in the definition of a "school" any and all public or private preschool.

California has enacted several laws attempting to keep sex offenders away from children. Most notably, Jessica's Law prohibits registered sex offenders from residing within 2,000 feet "of any public or private school, or park where children regularly gather." (Pen. Code, § 3003.5, subd. (b).) Additionally, registered sex offenders are not allowed to loiter about schools or public places or near which children attend or normally congregate. (Pen. Code, § 653, subd. (b).)

An offender who is required to register as a sex offender must register for a specified period of time in accordance with California's new tiered sex registration system. Registration falls into three-tiers, either ten-years, twenty-years, or lifetime registration. Registration shall be with the local law enforcement in the place of residence. (Pen. Code, § 290, subd. (b).) The registrant must update the registration annually, within five working days of his or her birthday. (Pen. Code, § 290.012, subd. (a).) If the registrant changes his or her name, the registrant must inform the local law enforcement agency with which he or she is currently registered within five working days. (Pen. Code, § 290.014.)

A person who moves, whether within the same jurisdiction where currently registered or to a new jurisdiction inside or outside California, must, in person, within five working days of the move, inform the law enforcement agency or agencies with which he or she last registered of the move, the new address or transient location, if known, and any plans he or she has to return to California. (Pen. Code, § 290.013.) When a sex offender moves from one county to another in California without notifying law enforcement in both the county that the offender departs and the county into which the offender moves, he or she has committed two offenses: one under Pen. Code, § 290(b), and another under Pen. Code, § 290.013.

Additionally, if a person required to register as a sex offender spends more than 14 days, or an aggregate period exceeding 30 days in a calendar year, enrolled as a college student or employed or at such an institution, that person must register with the campus police department. (Pen. Code, § 290.009.)

Re-registration is required upon release from incarceration, unless the person was incarcerated for less than 30 days and is returning to the last registered address. (Pen. Code, § 290.015(a).)

A defendant may be charged with and convicted of multiple violations of the Sex Offender Registration Act, for example, based on a failure to register within five days of his or her birthday and a separate failure to register within five days of changing his or her address.

3. Suggested Amendment

In order to avoid any confusion about who can grant permission, the author should consider broadening the term “chief administrative official.” Many pre-schools are not as formalized as traditional K-12 educational institutions. The following amendment would address that concern:

626.81. (a) A person who is required to register as a sex offender pursuant to Section 290, who comes into any school building or upon any school ground without lawful business thereon and written permission indicating the date or dates and times for which permission has been granted from the chief administrative official, owner, director, or general manager of that school, is guilty of a misdemeanor.

(b) (1) The chief administrative official, owner, director, or general manager of a school may grant a person who is subject to this section and not a family member of a pupil who attends that school, permission to come into a school building or upon the school grounds to volunteer at the school, provided that, notwithstanding subdivisions (a) and (c) of Section 290.45, at least 14 days prior to the first date for which permission has been granted, the chief administrative official notifies or causes to be notified the parent or guardian of each child attending the school that a person who is required to register as a sex offender pursuant to Section 290 has been granted permission to come into a school building or upon school grounds, the date or dates and times for which permission has been granted, and his or her right to obtain information regarding the person from a designated law enforcement entity pursuant to Section 290.45. The notice required by this paragraph shall be provided by one of the methods identified in Section 48981 of the Education Code.