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## SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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<b>Bill No:</b>	SB 26	<b>Hearing Date:</b>	March 29, 2017
<b>Author:</b>	Leyva		
<b>Version:</b>	March 20, 2016		
<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
<b>Consultant:</b>	Lynn Lorber		

**Subject:** Sex offenders: access to schools

**NOTE:** This bill has been referred to the Committees on Education and Public Safety. A "do pass" motion should include referral to the Committee on Public Safety.

### SUMMARY

This bill prescribes the authority for a person who is a registered sex offender and who holds the right to make educational decisions for a student at a K-12 school to be on that school's campus, and as well as for others who have lawful business to be on a school campus.

### BACKGROUND

Existing law:

- 1) Requires any person who has been convicted of specified sexual offenses to register as a sex offender for the rest of his or her life 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)
- 2) 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. (PC § 626.81)
- 3) 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. (PC § 626.81)
- 4) Prohibits a registered sex offender from residing within 2,000 feet of any public or private school, or park where children regularly gather. (PC § 3003.5)

- 5) 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. (PC § 290.95)
- 6) 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)
- 7) 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. (EC § 51101)

## ANALYSIS

This bill prescribes the authority for a person who is registered sex offender and who holds the right to make educational decisions for a student at a K-12 school to be on that school's campus, and as well as for others who have lawful business to be on a school campus. Specifically, this bill:

- 1) Authorizes a person who is a registered sex offender and who is a parent or guardian of a student who attends the school to enter a school building or upon school grounds for *any lawful purpose*.
- 2) Authorizes a person who is a registered sex offender and who is a parent or guardian of a student who attends the school to enter a school building or upon school grounds for *purposes that relate to his or her right to make educational decisions* for his or her child.
- 3) Prohibits a person who is a registered sex offender from entering a school building or upon school grounds if he or she is required to register for a conviction of any of the following acts:

- a) Touching an intimate part of another person if the touching is against the will of the person touched.
  - b) Forcible rape.
  - c) Forcible sodomy.
  - d) Lewd and lascivious acts against a child under the age of 14 years.
  - e) Three or more acts of substantial sexual conduct or three or more acts of lewd or lascivious conduct with a child under the age of 14 years.
  - f) Oral copulation with a minor or against the victim's will.
  - g) Sexual penetration against the victim's will.
  - h) Kidnapping with the intent to commit forcible rape, forcible sodomy, lewd and lascivious acts against a child under the age of 14 years, oral copulation with a minor or against the victim's will, or sexual penetration against the victim's will.
  - i) Human trafficking.
  - j) Any offense involving lewd or lascivious conduct that contributes to the delinquency of a minor.
  - k) A felony violation of knowingly distributing, sending, causing to be sent, exhibiting, or offering to distribute or exhibit by any means, including by physical delivery, telephone, electronic communication, or in person, any harmful matter that depicts a minor or minors engaging in sexual conduct.
  - l) Solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence.
- 4) Authorizes a person who is a registered sex offender to enter a school building or upon school grounds to conduct *lawful business* at the school only when students are not present, except as provided by this bill.
- 5) Authorizes a registered sex offender to enter a polling place located in a school building or on school grounds for the purpose of voting in an election.
- 6) Requires a person who is a registered sex offender and who holds the right to make educational decisions for a child, and thereby allowed to enter a school building or upon school grounds, to be supervised by a school official while in the school buildings or upon school grounds.
- 7) Deletes the authority for a person who is a registered sex offender to be in any school building or upon any school grounds *without lawful business* with written permission from the chief administrative official of that school.

- 8) Prohibits a person who is a registered sex offender from entering any school building or upon any school grounds without lawful business for the duration of the time he or she is required to register.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Current law allows a school administrative official to grant a registered sex offender access to a school campus as long as the parents and staff receive a two week notice. Registered sex offenders are also allowed to volunteer at schools as long as they are not acting in a supervisory role or in constant interaction with children as part of their volunteering. While there are some restrictions on the types of volunteering in which registered sex offenders may participate, there is also enough ambiguity that a registered sex offender could be unsupervised while interacting with children on a school campus. Parent who do not wish to have registered sex offenders present at their child’s school have no legal recourse with which to prevent this situation.”
- 2) ***Effect on parents.*** 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.

The term “lawful business” is defined as “a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.” This does not clearly indicate that parents who are registered sex offenders have lawful business at their child's school, assuming the person's parental rights have not been limited or terminated. If a parent who is a registered sex offender and is prohibited from contact with his or her own child, written permission from a school principal would likely violate court orders regarding contact with children.

- 3) ***Limits some education rights holders.*** This bill authorizes a person who is a registered sex offender and who is a parent or guardian of a student who attends the school to enter the campus for *any lawful purpose*. This provision is meant to allow a parent who was convicted of an offense that were not “serious or violent” to be on the campus for activities such as parent-teacher conferences (relates to the right to make educational decisions for the student) and school plays (a lawful purpose but not related to making an educational decision).

This bill authorizes a person who is a registered sex offender and who is a parent or guardian of a student who attends the school to be on campus for *purposes that relate to his or her right to make educational decisions* for his or her child. This provision is meant to allow a parent who was convicted of an offense that was “serious or violent” to be on the campus only for activities such as parent-teacher conferences (relates to the right to make educational decisions for the

student) but not for school plays (a lawful purpose but not related to making an educational decision).

This bill prohibits a person who is not covered by one of the provisions mentioned above from entering a school building or upon school grounds if he or she is required to register for a conviction of specified acts (a person who has lawful business but not education rights).

Should a person who holds the right to make educational decisions for a student be restricted from a school campus for events or activities that do not relate to his or her right to make educational decisions, such as for a school play? **Staff recommends an amendment** to authorize the schoolsite administrator to grant permission, on a case-by-case basis, for such a person to be on a school campus for lawful business beyond purposes that relate to his or her right to make educational decisions for his or her child.

- 4) ***Is it clear which provisions apply?*** This bill establishes several scenarios in which a person who is a registered sex offender may have the authority to enter a school campus. However, this bill may be unclear as to which scenario applies to an individual person. The author may wish to add clarifying provisions as this bill moves forward.
- 5) ***What does supervise mean and who is a school official?*** This bill requires that a person who is a registered sex offender and who is allowed to enter a school building or upon school grounds be supervised by a school official while in the school buildings or upon school grounds. This bill does not provide guidance or parameters as to what constitutes “supervision,” such as being within visual range, nor does the bill define school official. It is possible that a school official could be limited to the schoolsite principal or other administrator, or be as broad as any person employed by that school.
- 6) ***Lawful business but not education rights.*** This bill authorizes a person who is a registered sex offender to be on campus to conduct *lawful business* at the school only when students are not present. **Staff recommends an amendment** to clarify that such a person does *not* hold the right to make educational decisions for a student at that school (educational rights holders are covered under a separate provision).
- 7) ***Clarifying amendments needed.*** **Staff recommends amendments** to reflect that a person other than a parent or guardian may hold the right to make educational decisions for a student, and to clarify that a parent or guardian affected by this bill is one who holds the right to make educational decisions (some parents or guardians do not hold these rights).
- 8) ***Related legislation.*** SB 695 (Lara) creates a tiered sex offender registry based on the severity of the offense and other factors, whereby a person may be required to register for 10 years, 20 years, or for life. SB 695 is scheduled to be heard by the Senate Public Safety Committee on April 18.

**SUPPORT**

California Protective Parents Association  
Communities United for Safety  
Crime Victims United of California  
Fontana Democrats  
Fontana Unified School District  
Peace Officers Research Association of California  
Individuals

**OPPOSITION**

Alliance for Constitutional Sex Offense Laws  
Individuals

**-- END --**