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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 26                      **Hearing Date:** April 25, 2017  
**Author:** Leyva  
**Version:** April 18, 2017  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Sex Offenders: Access to Schools*

### HISTORY

**Source:** Author

**Prior Legislation:** SB 1128 (Alquist) Chapter 337, Stats. 2006

**Support:** California Protective Parents Association; Communities United for Safety and Justice; Fontana Democrats; Fontana Unified School District; Peace Officers Research Association; a number of individuals

**Opposition:** California Attorneys for Criminal Justice; a number of individuals

### PURPOSE

***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.***

*Existing law* 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)

*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. (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)

*This bill* provides that a person who is required to register as a sex offender, for the duration of the time he or she is required to register, who enters any school building or upon any school grounds without lawful business is guilty of a misdemeanor.

*This bill* provides that a person who must register as a sex offender and does not have the right to make educational decisions for a pupil for a pupil at the school may enter a school building or upon school grounds to conduct lawful business at the school only when pupils are not present.

*This bill* authorizes a person who is a registered sex offender and who has the right to make educational decisions for a pupil who attends the school, may enter a school building upon school grounds for purposes that relate to the exercise of that right. The person shall be supervised by a school employee while in the school buildings or upon school grounds.

*This bill* defines "supervised" as the register sex offender being in view of the school employee.

*This bill* provides that a registered sex offender and who has the right to make educational decisions for a pupil who attends the school may enter a school building or upon school grounds for any lawful purpose not related to his or her right to make educational decisions for the pupil, unless he or she is required to register for specified convictions. The person shall be supervised by a school employee while in the school building or upon the grounds.

*This bill* 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:

- 1) Touching an intimate part of another person if the touching is against the will of the person touched.
- 2) Forcible rape.
- 3) Forcible sodomy.
- 4) Lewd and lascivious acts against a child under the age of 14 years.
- 5) 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.
- 6) Oral copulation with a minor or against the victim's will.
- 7) Sexual penetration against the victim's will.
- 8) 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.
- 9) Human trafficking.
- 10) Any offense involving lewd or lascivious conduct that contributes to the delinquency of a minor.
- 11) 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.
- 12) Solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or violence.

*This bill* 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.

*This bill* 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.

*This bill* specifies that it shall not apply to any pupil who is registered as a sex offender for an offense committed as a juvenile.

*This bill* provides that the penalty for a first conviction shall be up to 6 months in county jail and/or a fine not exceeding \$500 (\$2050 with penalty assessments).

*This bill* provides that a second violation shall be punished by 10 days to 6 months in county jail and/or a fine not exceeding \$500 (\$2050 with penalty assessments). The bill provides that the person shall not be released on probation, parole, or any other basis until he or she has served not less than 10 days.

*This bill* provides that a third or subsequent violation shall be by imprisonment in the county jail for 90 days to 6 months and/or a fine not exceeding \$500 (\$2050 with penalty assessments). The bill provides that the person shall not be released on probation, parole, or any other basis until he or she has served not less than 90 days.

## COMMENTS

### 1. Need for This 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. Parents 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.

This bill amends section 626.81 of the Penal Code to prohibit registered sex offenders from volunteering on a school campus. This bill further specifies that registered sex offenders, who are not parents or guardians, may enter a school site for work purposes only when no children are present. Under SB 26, registered sex offenders who hold ed rights for the child may enter their child's school campus, under supervision, for purposes directly related to their right to make educational decisions for their child, such as attending parent/teacher conferences. Those ed rights holders may also attend afterschool events, under supervision, unless they have been convicted of a violent and/or serious felony, such as rape, continuous sexual abuse of a child, lewd and lascivious acts, and other serious crimes. SB 26 helps ensure that children are in a safe environment when they are at school, and protects school districts that have adopted a similar policy from litigation.

### 2. Limits on 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.

This bill prohibits a registered sex offender who does not have education rights for a pupil at the school from entering school grounds. It does allow a register sex offender, without education rights, to enter school grounds for lawful business when children are not present or to vote.

### 3. Sex Offenders with Education Rights

This bill authorizes a person who is a registered sex offender and who has the right to make education decisions for 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 registered sex offender 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 authorizes a person who is a registered sex offender and who has the right to make educational decisions for a person who attends the school to enter the campus for *any lawful purpose*. This provision is meant to allow a registered sex offender with educational rights who 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).

The sex offender with educational rights can be on school ground only with supervision. Supervision is defined as being in the view of the school employee.

This bill provides a person with educational rights may not enter school grounds for any lawful purpose not related to educational rights if he or she is required to register for one of a list of specified offenses. Should some sex offenders with educational rights be prohibited from attending things like school plays and graduation with no exceptions? Should a school administrator be able to decide to let such a person attend such an event? Could having a person with education rights attend such an event be, in some cases, in the best interest of the child? Are these the appropriate offenses to exclude from these other non-educational rights related events? Should the list be more appropriately limited to offenses against children?

### 4. Argument in Support

Fontana Unified School District supports this bill stating:

In 2006, voters passed Proposition 83 to prohibit a person who is required to register as a sex offender from living in specified places, including within 2,000 feet of a school or park where children regularly gather. Parents are concerned, however, that registered sex offenders can still access their children's schools and even volunteer in a variety of capacities. The type of volunteering in which they may participate is limited, but there is enough ambiguity that a registered sex offender may be left unsupervised while interacting with children on a school campus. Parents should not have to worry about the safety of their children at school, and it is vital that schools have a healthy environment for pupils to thrive.

Additionally, school districts that choose to proactively ban registered sex offenders from entering district schools should be empowered to do so. Recently, parents at Fontana Unified School District successfully advocated for such a ban, which was unanimously approved by the school board. After its policy was changed to reflect the outpouring of parental concerns, the district was sued. The outcome of this lawsuit is still to be determined, burdening families who feel uneasy about exposing their children to unknown dangers.

SB 26 would proactively address these concerns by creating a uniform, statewide policy that bans sex offenders from school campuses and interacting with children. Loopholes in the current law that may allow registered sex offenders to be around children unsupervised would be closed and children would be protected from potential harms. It is critical that we enrich our children with a healthy and safe environment that is conducive to learning. Families should be able to focus on their children going to school and receiving a strong education, without worrying that their child could be exposed to a registered sex offender on campus.

## 5. Argument in Opposition

CACJ opposes this bill stating:

Numerous studies of programs throughout the United States have failed to find an association between Sex Offender Registration & Notification (SORN) requirements, and either increased or decreased recidivism. (The initial registration requirements were shown to have an impact-except as noted, in California-on reducing first time offenses.)

And yet, “[r]emarkably, given the ostensible public safety premise of registration and notification, it largely remains as untested article of faith that the laws tangibly contribute to community safety.”)Thomas, the Registration and Monitoring of Sex Offenders: A Comparative Study (2011) at p. 146.)

Furthermore, as restrictions placed on registrants have become more punitive, courts in various States have begun to push back: while many gave a pass to SORN legislation in the “first generation” (if you will) of such legislation based on the idea that it was not punitive, courts are beginning to question that as newer restrictions are added. (Carpenter & Beverin, “*Article: The Evolution of Unconstitutionality in Sex Offender Registration Laws*” (2012) 63 Hastings L.J. 1071, 1129-1130.)

The changes proposed by SB 26 “tighten the screws” on registrants, without any distinction as to whether the offenses leading to registration involved children, or not. AS you know, whereas the current law allows “a parent or guardian” to enter a school building, or onto the grounds, the change adds the additional requirement that the parent or guardian “has the right to make educational decisions for his or her child.” But there may very well be reasons why a particular parent or guardian, not having the right to make educational decision for their child, might still need access to schools for reasons relating to their child without regard to that specific level of legal authority. A child may be injured, or there may be an emergency at the school, or the parent who does have authority to make such decisions may wish input from the other parent, or guardian.

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