

## **BILL ANALYSIS**

Senate Research Center  
81R10833 KCR-D

S.B. 1709  
By: West  
Criminal Justice  
4/27/2009  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current law, consensual sex does not exist when one of the subjects involved is a minor. State law allows a defense to prosecution if no more than a three-year age difference exists between the victim and the defendant in determining if statutory rape has been committed. Texas law mandates lifetime sex offender registration, with few exceptions, for any adult convicted of an offense under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure.

Hypothetically, if a man between the ages of 18 and 20 enters into or continues a sexual relationship with a female under the age of 17 and is subsequently convicted of the offense of sexual assault of a minor, he would be required to register as a sex offender for the remainder of his life. This hypothetical relationship could have started when both participants were minors and with the knowledge of the minor's parents, if not tacitly allowed. Texas law makes no distinction between this type of relationship and the registration requirements of a pedophile and can cause irrevocable harm and a bleak future.

This bill provides options to allow a young adult who has been convicted of certain offenses involving a underage victim to be able to petition the courts for release from registration requirements and provides an additional defense to prosecution if it is proven that the younger victim deceived the older participant regarding the victim's age.

As proposed, S.B. 1709 amends current law relating to the prosecution of certain sexual offenses and to exempting certain persons from the duty to register as a sex offender in this state.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 42.017, Code of Criminal Procedure, as follows:

Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. Requires the judge, in the trial of an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency With a Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 43.25 (Sexual Performance by a Child), Penal Code, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that at the time of the offense, the defendant was not more than 4 years older than the victim or intended victim, rather than younger than 19 years of age, and the victim or intended victim was at least 13 years of age.

SECTION 2. Amends Section 5(g), Article 42.12, Code of Criminal Procedure, as follows:

(g) Requires the judge, if a judge places on community supervision under this section a defendant charged with an offense under Section 21.11, 22.011, 22.021, or 43.25, Penal Code, to make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge determines that at the time of the offense, the defendant was not more than 4 years older than the victim or intended victim, rather

than younger than 19 years of age, and the victim or intended victim was at least 13 years of age.

SECTION 3. Amends Article 62.301, Code of Criminal Procedure, by amending Subsections (a), (c), and (d), and adding Subsection (a-1), as follows:

(a) Authorizes a person required to register under this chapter, if eligible under Subsection (b) or (c), to petition the court having jurisdiction over the case for an order exempting the person from registration under this chapter at any time on or after the date of the person's sentencing or the date, rather than after the date, the person is placed on deferred adjudication community supervision, as applicable.

(a-1) Provides that a person is eligible to petition the court as described by Subsection (a) if the person is required to register only as a result of a single reportable adjudication, other than an adjudication of delinquent conduct, for an offense under Section 21.11, 22.011, 22.021, or 43.25, Penal Code; was 20 years of age or older and younger than 25 years of age at the time the offense was committed; and before the date of the petition, received a dismissal and discharge under Section 5(c) (relating to certain reasons for a judge to dismiss the proceedings and discharge certain defendants), Article 42.12 (Judgment and Sentence).

(c) Provides that a defendant who before September 1, 2009, rather than September 1, 2001, is convicted of or placed on deferred adjudication community supervision for an offense under Section 21.11, 22.011, 22.021, or 43.25, Penal Code, is eligible to petition the court as described by Subsection (a). Makes a conforming change.

(d) Requires, rather than authorizes, the court to issue an order exempting the person from registration under this chapter for certain reasons after a hearing on the petition described by Subsection (a).

SECTION 4. Amends Section 22.011, Penal Code, by adding Subsections (e-1), (g), and (h), as follows:

(e-1) Provides that it is an affirmative defense to prosecution under Subsection (a)(2) (relating to an offense committed if the person intentionally or knowingly causes the sexual assault of a child) that:

(1) the actor reasonably believed that the victim was 17 years of age or older and was not required under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, to register for life as a sex offender, or was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section or Section 22.021; and

(2) the victim was 13 years of age or older and in the presence of the actor, displayed tangible, false evidence or made a false statement that was intentionally designed to mislead another as to the victim's age and when considered objectively by the court with other circumstances, can reasonably be thought to be an accurate identification of the victim or an accurate representation of the victim's age.

(g) Provides that Subsection (e-1) does not invalidate or otherwise diminish Rule 412 (Evidence of Previous Sexual Conduct in Criminal Cases), Texas Rules of Evidence.

(h) Provides that Subsection (e-1) does not apply to an actor who engaged in the prohibited conduct with the victim over a period that is 180 days or longer.

SECTION 5. Amends Section 22.021, Penal Code, by adding Subsections (d-1), (g), and (h), as follows:

(d-1) Provides that it is an affirmative defense to prosecution under Subsection (a)(2)(B) (relating to the victim being younger than 14 years of age) that:

(1) the actor reasonably believed that the victim was 17 years of age or older and was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender, or was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section or Section 22.011; and

(2) the victim was 13 years of age or older and in the presence of the actor, displayed tangible, false evidence or made a false statement that was intentionally designed to mislead another as to the victim's age and when considered objectively by the court with other circumstances, can reasonably be thought to be an accurate identification of the victim or an accurate representation of the victim's age.

(g) Provides that Subsection (d-1) does not invalidate or otherwise diminish Rule 412, Texas Rules of Evidence.

(h) Provides that Subsection (d-1) does not apply to an actor who engaged in the prohibited conduct with the victim over a period that is 180 days or longer.

SECTION 6. Makes application of Article 42.017, Code of Criminal Procedure, and Section 5(g), Article 42.12, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 7. Provides that the changes in law made by this Act in amending Chapter 62, Code of Criminal Procedure, apply to any person who, on or after the effective date of this Act, is required to register under that chapter, regardless of whether the offense or conduct for which the person is required to register occurs before, on or after the effective date of this Act.

SECTION 8. Makes application the change in law in amending Sections 22.011 and 22.021, Penal Code, of this Act prospective.

SECTION 9. Effective date: September 1, 2009.