

AN ACT

relating to exempting certain young persons who are convicted of an offense involving consensual sex from the requirement of registering as a sex offender in this state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 42.017, Code of Criminal Procedure, is amended to read as follows:

Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or 43.25, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that:

(1) at the time of the offense, the defendant was not more than four years older than the victim or intended victim [~~younger than 19 years of age~~] and the victim or intended victim was at least 14 [~~13~~] years of age; and

(2) the conviction is based solely on the ages of the defendant and the victim or intended victim at the time of the offense.

SECTION 2. Section 5(g), Article 42.12, Code of Criminal Procedure, is amended to read as follows:

(g) 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, the judge shall make an

1 affirmative finding of fact and file a statement of that
2 affirmative finding with the papers in the case if the judge
3 determines that:

4 (1) at the time of the offense, the defendant was not
5 more than four years older than the victim or intended victim
6 ~~[younger than 19 years of age]~~ and the victim or intended victim was
7 at least 14 ~~[13]~~ years of age; and

8 (2) the charge to which the plea is entered under this
9 section is based solely on the ages of the defendant and the victim
10 or intended victim at the time of the offense.

11 SECTION 3. Article 62.301, Code of Criminal Procedure, is
12 amended by amending Subsections (a), (c), and (d) and adding
13 Subsection (a-1) to read as follows:

14 (a) A ~~[If eligible under Subsection (b) or (c), a]~~ person
15 required to register under this chapter may petition the court
16 having jurisdiction over the case for an order exempting the person
17 from registration under this chapter:

18 (1) at any time on or after the date of the person's
19 sentencing or [after] the date the person is placed on deferred
20 adjudication community supervision, as applicable, if the person is
21 eligible to petition the court under Subsection (b) or (c); or

22 (2) at any time on or after the date the person
23 receives a dismissal and discharge under Section 5(c), Article
24 42.12, if the person is eligible to petition the court under
25 Subsection (a-1).

26 (a-1) A person is eligible to petition the court as
27 described by Subsection (a) if the person:

1 (1) is required to register only a result of a single
2 reportable adjudication, other than an adjudication of delinquent
3 conduct, for an offense under Section 21.11 or 22.011, Penal Code,
4 if the charge for the offense is based solely on the ages of the
5 person and the victim or intended victim;

6 (2) was younger than 21 years of age at the time the
7 offense was committed; and

8 (3) before or on the date of the petition, received a
9 dismissal and discharge under Section 5(c), Article 42.12.

10 (c) A defendant who before September 1, 2009 [~~2001~~], is
11 convicted of or placed on deferred adjudication community
12 supervision for an offense under Section 21.11, 22.011, 22.021, or
13 43.25, Penal Code, is eligible to petition the court as described by
14 Subsection (a). The court may consider the petition only if the
15 petition states and the court finds that the defendant would have
16 been entitled to the entry of an affirmative finding under Article
17 42.017 or Section 5(g), Article 42.12, as appropriate, had the
18 conviction or placement on deferred adjudication community
19 supervision occurred after September 1, 2009 [~~2001~~].

20 (d) After a hearing on the petition described by Subsection
21 (a), the court may issue an order exempting the person from
22 registration under this chapter if it appears by a preponderance of
23 the evidence that:

24 (1) [~~as presented by a registered sex offender~~
25 ~~treatment provider, that~~] the exemption does not threaten public
26 safety; [~~and~~]

27 (2) [~~that~~] the person's conduct did not occur without

1 the consent of the victim or intended victim as described by Section
2 22.011(b), Penal Code;

3 (3) the exemption is in the best interest of the victim
4 or intended victim; and

5 (4) the exemption is in the best interest of justice.

6 SECTION 4. Article 62.402, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 62.402. DETERMINATION OF MINIMUM REQUIRED
9 REGISTRATION PERIOD. (a) The department [~~council~~] by rule shall
10 determine the minimum required registration period under the Adam
11 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Section
12 16901 et seq.) [~~14071 (Jacob Wetterling Crimes Against Children and~~
13 ~~Sexually Violent Offender Registration Program)] for each
14 reportable conviction or adjudication under this chapter, if this
15 state is to receive the maximum amount of federal money available to
16 a state as described by that law.~~

17 (b) After determining the minimum required registration
18 period for each reportable conviction or adjudication under
19 Subsection (a), the department [~~council~~] shall compile and publish
20 a list of reportable convictions or adjudications for which a
21 person must register under this chapter for a period that exceeds
22 the minimum required registration period under federal law.

23 (c) To the extent possible, the department [~~council~~] shall
24 periodically verify with the Office of Sex Offender Sentencing,
25 Monitoring, Apprehending, Registering, and Tracking [~~Bureau of~~
26 ~~Justice Assistance~~] or another appropriate federal agency the
27 accuracy of the list of reportable convictions or adjudications

1 described by Subsection (b).

2 SECTION 5. The changes in law made by this Act in amending
3 Chapter 62, Code of Criminal Procedure, apply to any person who, on
4 or after the effective date of this Act, is required to register
5 under that chapter, regardless of whether the offense or conduct
6 for which the person is required to register occurs before, on, or
7 after the effective date of this Act.

8 SECTION 6. Article 42.017 and Section 5(g), Article 42.12,
9 Code of Criminal Procedure, as amended by this Act, apply only to a
10 judgment of conviction entered on or after the effective date of
11 this Act or a grant of deferred adjudication made on or after the
12 effective date of this Act.

13 SECTION 7. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 3148 was passed by the House on May 6, 2009, by the following vote: Yeas 131, Nays 12, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3148 on May 25, 2009, by the following vote: Yeas 111, Nays 28, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3148 was passed by the Senate, with amendments, on May 22, 2009, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor