

By: West

S.B. No. 1709

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the prosecution of certain sexual offenses and to  
3 exempting certain persons from the duty to register as a sex  
4 offender in this state.

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

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

8 Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the  
9 trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or  
10 43.25, Penal Code, the judge shall make an affirmative finding of  
11 fact and enter the affirmative finding in the judgment in the case  
12 if the judge determines that:

13 (1) at the time of the offense, the defendant was not  
14 more than 4 years older than the victim or intended victim [~~younger~~  
15 ~~than 19 years of age~~] and the victim or intended victim was at least  
16 13 years of age; and

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

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

22 (g) If a judge places on community supervision under this  
23 section a defendant charged with an offense under Section 21.11,  
24 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 4 years older than the victim or intended victim [~~younger~~  
6 ~~than 19 years of age~~] and the victim or intended victim was at least  
7 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) 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 at any time on or after the  
18 date of the person's sentencing or [~~after~~] the date the person is  
19 placed on deferred adjudication community supervision, as  
20 applicable.

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

23 (1) is required to register only a result of a single  
24 reportable adjudication, other than an adjudication of delinquent  
25 conduct, for an offense under Section 21.11, 22.011, 22.021, or  
26 43.25, Penal Code;

27 (2) was 20 years of age or older and younger than 25

1 years of age at the time the offense was committed; and

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

4 (c) A defendant who before September 1, 2009 [~~2001~~], is  
5 convicted of or placed on deferred adjudication community  
6 supervision for an offense under Section 21.11, 22.011, 22.021, or  
7 43.25, Penal Code, is eligible to petition the court as described by  
8 Subsection (a). The court may consider the petition only if the  
9 petition states and the court finds that the defendant would have  
10 been entitled to the entry of an affirmative finding under Article  
11 42.017 or Section 5(g), Article 42.12, as appropriate, had the  
12 conviction or placement on deferred adjudication community  
13 supervision occurred after September 1, 2009 [~~2001~~].

14 (d) After a hearing on the petition described by Subsection  
15 (a), the court shall [~~may~~] issue an order exempting the person from  
16 registration under this chapter if it appears by a preponderance of  
17 the evidence:

18 (1) as presented by a registered sex offender  
19 treatment provider, that the exemption does not threaten public  
20 safety; and

21 (2) that the person's conduct did not occur without the  
22 consent of the victim or intended victim as described by Section  
23 22.011(b), Penal Code.

24 SECTION 4. Section 22.011, Penal Code, is amended by adding  
25 Subsections (e-1), (g), and (h) to read as follows:

26 (e-1) It is an affirmative defense to prosecution under  
27 Subsection (a)(2) that:

1           (1) the actor reasonably believed that the victim was  
2 17 years of age or older and:

3           (A) was not required under Chapter 62, Code of  
4 Criminal Procedure, to register for life as a sex offender; or

5           (B) was not a person who under Chapter 62, Code of  
6 Criminal Procedure, had a reportable conviction or adjudication for  
7 an offense under this section or Section 22.021; and

8           (2) the victim:

9           (A) was 13 years of age or older; and

10           (B) in the presence of the actor, displayed  
11 tangible, false evidence or made a false statement that:

12           (i) was intentionally designed to mislead  
13 another as to the victim's age; and

14           (ii) when considered objectively by the  
15 court with other circumstances, can reasonably be thought to be an  
16 accurate identification of the victim or an accurate representation  
17 of the victim's age.

18           (g) Subsection (e-1) does not invalidate or otherwise  
19 diminish Rule 412, Texas Rules of Evidence.

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

23           SECTION 5. Section 22.021, Penal Code, is amended by adding  
24 Subsections (d-1), (g), and (h) to read as follows:

25           (d-1) It is an affirmative defense to prosecution under  
26 Subsection (a)(2)(B) that:

27           (1) the actor reasonably believed that the victim was

1 17 years of age or older and:

2 (A) was not required under Chapter 62, Code of  
3 Criminal Procedure, to register for life as a sex offender; or

4 (B) was not a person who under Chapter 62, Code of  
5 Criminal Procedure, had a reportable conviction or adjudication for  
6 an offense under this section or Section 22.011; and

7 (2) the victim:

8 (A) was 13 years of age or older; and

9 (B) in the presence of the actor, displayed  
10 tangible, false evidence or made a false statement that:

11 (i) was intentionally designed to mislead  
12 another as to the victim's age; and

13 (ii) when considered objectively by the  
14 court with other circumstances, can reasonably be thought to be an  
15 accurate identification of the victim or an accurate representation  
16 of the victim's age.

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

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

22 SECTION 6. Article 42.017, Code of Criminal Procedure, and  
23 Section 5(g), Article 42.12, Code of Criminal Procedure, as amended  
24 by this Act, apply only to a judgment of conviction entered on or  
25 after the effective date of this Act or a grant of deferred  
26 adjudication made on or after the effective date of this Act.

27 SECTION 7. The changes in law made by this Act in amending

1 Chapter 62, Code of Criminal Procedure, apply to any person who, on  
2 or after the effective date of this Act, is required to register  
3 under that chapter, regardless of whether the offense or conduct  
4 for which the person is required to register occurs before, on, or  
5 after the effective date of this Act.

6 SECTION 8. The change in law made by this Act in amending  
7 Sections 22.011 and 22.021, Penal Code, apply only to an offense  
8 committed on or after the effective date of this Act. An offense  
9 committed before the effective date of this Act is covered by the  
10 law in effect when the offense was committed, and the former law is  
11 continued in effect for that purpose. For the purposes of this  
12 section, an offense was committed before the effective date of this  
13 Act if any element of the offense was committed before that date.

14 SECTION 9. This Act takes effect September 1, 2009.