

1-1 By: West S.B. No. 1709  
1-2 (In the Senate - Filed March 10, 2009; March 20, 2009, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 May 7, 2009, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; May 7, 2009,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1709 By: Whitmire

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the prosecution and punishment of certain sexual  
1-11 offenses and to exempting certain persons from the duty to register  
1-12 as a sex offender in this state.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Article 42.017, Code of Criminal Procedure, is  
1-15 amended to read as follows:

1-16 Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the  
1-17 trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or  
1-18 43.25, Penal Code, the judge shall make an affirmative finding of  
1-19 fact and enter the affirmative finding in the judgment in the case  
1-20 if the judge determines that:

1-21 (1) at the time of the offense, the defendant was not  
1-22 more than four years older than the victim or intended victim  
1-23 [younger than 19 years of age] and the victim or intended victim was  
1-24 at least 13 years of age; and

1-25 (2) the conviction is based solely on the ages of the  
1-26 defendant and the victim or intended victim at the time of the  
1-27 offense.

1-28 SECTION 2. Subsection (g), Section 5, Article 42.12, Code  
1-29 of Criminal Procedure, is amended to read as follows:

1-30 (g) If a judge places on community supervision under this  
1-31 section a defendant charged with an offense under Section 21.11,  
1-32 22.011, 22.021, or 43.25, Penal Code, the judge shall make an  
1-33 affirmative finding of fact and file a statement of that  
1-34 affirmative finding with the papers in the case if the judge  
1-35 determines that:

1-36 (1) at the time of the offense, the defendant was not  
1-37 more than four years older than the victim or intended victim  
1-38 [younger than 19 years of age] and the victim or intended victim was  
1-39 at least 13 years of age; and

1-40 (2) the charge to which the plea is entered under this  
1-41 section is based solely on the ages of the defendant and the victim  
1-42 or intended victim at the time of the offense.

1-43 SECTION 3. Subdivisions (5) and (6), Article 62.001, Code  
1-44 of Criminal Procedure, are amended to read as follows:

1-45 (5) "Reportable conviction or adjudication" means a  
1-46 conviction or adjudication, including an adjudication of  
1-47 delinquent conduct or a deferred adjudication, that, regardless of  
1-48 the pendency of an appeal, is a conviction for or an adjudication  
1-49 for or based on:

1-50 (A) a violation of Section 21.02 (Continuous  
1-51 sexual abuse of young child or children), 21.11 (Indecency with a  
1-52 child), 22.011 (Sexual assault), 22.021 (Aggravated sexual  
1-53 assault), or 25.02 (Prohibited sexual conduct), Penal Code, other  
1-54 than a violation of Section 21.11 or 22.011, Penal Code, for which  
1-55 the judgment in the case contains an affirmative finding under  
1-56 Article 42.017 or the papers in the case contain an affirmative  
1-57 finding described by Section 5(g), Article 42.12;

1-58 (B) a violation of Section 43.05 (Compelling  
1-59 prostitution), 43.25 (Sexual performance by a child), or 43.26  
1-60 (Possession or promotion of child pornography), Penal Code;

1-61 (C) a violation of Section 20.04(a)(4)  
1-62 (Aggravated kidnapping), Penal Code, if the actor committed the  
1-63 offense or engaged in the conduct with intent to violate or abuse

2-1 the victim sexually;

2-2 (D) a violation of Section 30.02 (Burglary),  
 2-3 Penal Code, if the offense or conduct is punishable under  
 2-4 Subsection (d) of that section and the actor committed the offense  
 2-5 or engaged in the conduct with intent to commit a felony listed in  
 2-6 Paragraph (A) or (C);

2-7 (E) a violation of Section 20.02 (Unlawful  
 2-8 restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping),  
 2-9 Penal Code, if, as applicable:

2-10 (i) the judgment in the case contains an  
 2-11 affirmative finding under Article 42.015; or

2-12 (ii) the order in the hearing or the papers  
 2-13 in the case contain an affirmative finding that the victim or  
 2-14 intended victim was younger than 17 years of age;

2-15 (F) the second violation of Section 21.08  
 2-16 (Indecent exposure), Penal Code, but not if the second violation  
 2-17 results in a deferred adjudication;

2-18 (G) an attempt, conspiracy, or solicitation, as  
 2-19 defined by Chapter 15, Penal Code, to commit an offense or engage in  
 2-20 conduct listed in Paragraph (A), (B), (C), (D), or (E);

2-21 (H) a violation of the laws of another state,  
 2-22 federal law, the laws of a foreign country, or the Uniform Code of  
 2-23 Military Justice for or based on the violation of an offense  
 2-24 containing elements that are substantially similar to the elements  
 2-25 of an offense listed under Paragraph (A), (B), (C), (D), (E), (G),  
 2-26 or (J), but not if the violation results in a deferred adjudication;

2-27 (I) the second violation of the laws of another  
 2-28 state, federal law, the laws of a foreign country, or the Uniform  
 2-29 Code of Military Justice for or based on the violation of an offense  
 2-30 containing elements that are substantially similar to the elements  
 2-31 of the offense of indecent exposure, but not if the second violation  
 2-32 results in a deferred adjudication; or

2-33 (J) a violation of Section 33.021 (Online  
 2-34 solicitation of a minor), Penal Code.

2-35 (6) "Sexually violent offense" means a reportable  
 2-36 conviction or adjudication for any of the following offenses if  
 2-37 committed by a person 17 years of age or older:

2-38 (A) an offense under Section 21.02 (Continuous  
 2-39 sexual abuse of young child or children), 21.11(a)(1) (Indecency  
 2-40 with a child), 22.011 (Sexual assault), or 22.021 (Aggravated  
 2-41 sexual assault), Penal Code;

2-42 (B) an offense under Section 43.25 (Sexual  
 2-43 performance by a child), Penal Code;

2-44 (C) an offense under Section 20.04(a)(4)  
 2-45 (Aggravated kidnapping), Penal Code, if the defendant committed the  
 2-46 offense with intent to violate or abuse the victim sexually;

2-47 (D) an offense under Section 30.02 (Burglary),  
 2-48 Penal Code, if the offense is punishable under Subsection (d) of  
 2-49 that section and the defendant committed the offense with intent to  
 2-50 commit a felony listed in Paragraph (A) or (C) of Subdivision (5);  
 2-51 or

2-52 (E) an offense under the laws of another state,  
 2-53 federal law, the laws of a foreign country, or the Uniform Code of  
 2-54 Military Justice if the offense contains elements that are  
 2-55 substantially similar to the elements of an offense listed under  
 2-56 Paragraph (A), (B), (C), or (D).

2-57 SECTION 4. Article 62.301, Code of Criminal Procedure, is  
 2-58 amended by amending Subsections (a) and (c) and adding Subsection  
 2-59 (a-1) to read as follows:

2-60 (a) If eligible under Subsection (a-1), (b), or (c), a  
 2-61 person required to register under this chapter may petition the  
 2-62 court having jurisdiction over the case for an order exempting the  
 2-63 person from registration under this chapter at any time on or after  
 2-64 the date of the person's sentencing or ~~after~~ the date the person  
 2-65 is placed on deferred adjudication community supervision, as  
 2-66 applicable.

2-67 (a-1) A person is eligible to petition the court as  
 2-68 described by Subsection (a) if the person:

2-69 (1) is required to register only as a result of a

3-1 single reportable adjudication, other than an adjudication of  
3-2 delinquent conduct, for an offense under Section 21.11 or 22.011,  
3-3 Penal Code, if the charge for the offense is based solely on the  
3-4 ages of the person and the victim or intended victim;

3-5 (2) was younger than 25 years of age at the time the  
3-6 offense was committed; and

3-7 (3) before the date of the petition, received a  
3-8 dismissal and discharge under Section 5(c), Article 42.12.

3-9 (c) A defendant who before September 1, 2009 [2001], is  
3-10 convicted of or placed on deferred adjudication community  
3-11 supervision for an offense under Section 21.11, 22.011, 22.021, or  
3-12 43.25, Penal Code, is eligible to petition the court as described by  
3-13 Subsection (a). The court may consider the petition only if the  
3-14 petition states and the court finds that the defendant would have  
3-15 been entitled to the entry of an affirmative finding under Article  
3-16 42.017 or Section 5(g), Article 42.12, as appropriate, had the  
3-17 conviction or placement on deferred adjudication community  
3-18 supervision occurred after September 1, 2009 [2001].

3-19 SECTION 5. Article 62.402, Code of Criminal Procedure, is  
3-20 amended to read as follows:

3-21 Art. 62.402. DETERMINATION OF MINIMUM REQUIRED  
3-22 REGISTRATION PERIOD. (a) The department [council] by rule shall  
3-23 determine the minimum required registration period under the Adam  
3-24 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Section  
3-25 16901 et seq.) [14071 (Jacob Wetterling Crimes Against Children and  
3-26 Sexually Violent Offender Registration Program)] for each  
3-27 reportable conviction or adjudication under this chapter, if this  
3-28 state is to receive the maximum amount of federal money available to  
3-29 a state as described by that law.

3-30 (b) After determining the minimum required registration  
3-31 period for each reportable conviction or adjudication under  
3-32 Subsection (a), the department [council] shall compile and publish  
3-33 a list of reportable convictions or adjudications for which a  
3-34 person must register under this chapter for a period that exceeds  
3-35 the minimum required registration period under federal law.

3-36 (c) To the extent possible, the department [council] shall  
3-37 periodically verify with the Office of Sex Offender Sentencing,  
3-38 Monitoring, Apprehending, Registering, and Tracking [Bureau of  
3-39 Justice Assistance] or another appropriate federal agency the  
3-40 accuracy of the list of reportable convictions or adjudications  
3-41 described by Subsection (b).

3-42 SECTION 6. Subsection (b), Section 21.11, Penal Code, is  
3-43 amended to read as follows:

3-44 (b) It is an affirmative defense to prosecution under this  
3-45 section that the actor:

3-46 (1) was not more than four [three] years older than the  
3-47 victim and of the opposite sex;

3-48 (2) did not use duress, force, or a threat against the  
3-49 victim at the time of the offense; and

3-50 (3) at the time of the offense:

3-51 (A) was not required under Chapter 62, Code of  
3-52 Criminal Procedure, to register for life as a sex offender; or

3-53 (B) was not a person who under Chapter 62, Code of  
3-54 Criminal Procedure, had a reportable conviction or adjudication for  
3-55 an offense under this section.

3-56 SECTION 7. Subsection (e), Section 22.011, Penal Code, is  
3-57 amended to read as follows:

3-58 (e) It is an affirmative defense to prosecution under  
3-59 Subsection (a)(2) that:

3-60 (1) the actor was not more than four [three] years  
3-61 older than the victim and at the time of the offense:

3-62 (A) was not required under Chapter 62, Code of  
3-63 Criminal Procedure, to register for life as a sex offender; or

3-64 (B) was not a person who under Chapter 62, Code of  
3-65 Criminal Procedure, had a reportable conviction or adjudication for  
3-66 an offense under this section; and

3-67 (2) the victim:

3-68 (A) was a child of 14 years of age or older; and

3-69 (B) was not a person whom the actor was

4-1 prohibited from marrying or purporting to marry or with whom the  
4-2 actor was prohibited from living under the appearance of being  
4-3 married under Section 25.01.

4-4 SECTION 8. Article 42.017 and Subsection (g), Section 5,  
4-5 Article 42.12, Code of Criminal Procedure, as amended by this Act,  
4-6 apply only to a judgment of conviction entered on or after the  
4-7 effective date of this Act or a grant of deferred adjudication made  
4-8 on or after the effective date of this Act.

4-9 SECTION 9. The changes in law made by this Act in amending  
4-10 Chapter 62, Code of Criminal Procedure, apply to any person who, on  
4-11 or after the effective date of this Act, is required to register  
4-12 under that chapter, regardless of whether the offense or conduct  
4-13 for which the person is required to register occurs before, on, or  
4-14 after the effective date of this Act.

4-15 SECTION 10. The change in law made by this Act in amending  
4-16 Sections 21.11 and 22.011, Penal Code, apply only to an offense  
4-17 committed on or after the effective date of this Act. An offense  
4-18 committed before the effective date of this Act is covered by the  
4-19 law in effect when the offense was committed, and the former law is  
4-20 continued in effect for that purpose. For the purposes of this  
4-21 section, an offense was committed before the effective date of this  
4-22 Act if any element of the offense was committed before that date.

4-23 SECTION 11. This Act takes effect September 1, 2009.

4-24

\* \* \* \* \*