

By: Shapiro

S.B. No. 2034

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution of certain criminal sexual offenses and the registration of sex offenders in this state.

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

SECTION 1. Chapter 42, Code of Criminal Procedure, is amended by adding Article 42.0149 to read as follows:

Art. 42.0149. FINDING OF INTENT TO COMMIT CERTAIN SEXUAL OFFENSES. In the trial of an offense under Section 20.02, Penal Code, the judge shall make an affirmative finding of fact and enter the affirmative finding in the judgment of the case if the judge determines that the defendant committed the offense with the intent to commit an offense the conviction of which subjects the defendant to registration under Chapter 62.

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

(k) A judge who places on community supervision under this section a defendant charged with an offense under Section 20.02, Penal Code, shall make an affirmative finding of fact and file a statement of that affirmative finding with the papers of the case if the judge determines that the defendant committed the offense with the intent to commit an offense the conviction of which subjects the defendant to registration under Chapter 62.

SECTION 3. Articles 62.001(5), (6), and (10), Code of Criminal Procedure, are amended to read as follows:

1           (5) "Reportable conviction or adjudication" means a  
2 conviction or adjudication, including an adjudication of  
3 delinquent conduct or a deferred adjudication, that, regardless of  
4 the pendency of an appeal, is a conviction for or an adjudication  
5 for or based on:

6           (A) a violation of Section 21.02 (Continuous  
7 sexual abuse of young child or children), 21.11 (Indecency with a  
8 child), 22.011 (Sexual assault), 22.021 (Aggravated sexual  
9 assault), or 25.02 (Prohibited sexual conduct), Penal Code;

10           (B) a violation of Section 43.05 (Compelling  
11 prostitution), 43.25 (Sexual performance by a child), or 43.26  
12 (Possession or promotion of child pornography), Penal Code;

13           (C) a violation of Section 20.04(a)(4)  
14 (Aggravated kidnapping), Penal Code, if the actor committed the  
15 offense or engaged in the conduct with intent to violate or abuse  
16 the victim sexually;

17           (D) a violation of Section 30.02 (Burglary),  
18 Penal Code, if ~~[the offense or conduct is punishable under~~  
19 ~~Subsection (d) of that section and]~~ the actor committed the offense  
20 or engaged in the conduct with intent to commit a felony listed in  
21 Paragraph (A) or (C);

22           (E) a violation of Section 20.02 (Unlawful  
23 restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping),  
24 Penal Code, if, as applicable:

25           (i) the judgment in the case contains an  
26 affirmative finding under Article 42.0149 or 42.015; or

27           (ii) the order in the hearing or the papers

1 in the case contain an affirmative finding that:

2 (a) the victim or intended victim was  
3 younger than 17 years of age; or

4 (b) the defendant or respondent  
5 committed the offense or engaged in the conduct with the intent to  
6 commit an offense or engage in conduct the conviction or  
7 adjudication of which requires registration under this chapter;

8 (F) the second violation of Section 21.08  
9 (Indecent exposure), Penal Code, but not if the second violation  
10 results in a deferred adjudication or the functional equivalent of  
11 a deferred adjudication;

12 (G) an attempt, conspiracy, or solicitation, as  
13 defined by Chapter 15, Penal Code, to commit an offense or engage in  
14 conduct listed in Paragraph (A), (B), (C), (D), or (E);

15 (H) a violation of the laws of another state, a  
16 federally recognized Indian tribe, a territory of the United  
17 States, the United States, or [~~federal law, the laws of~~] a foreign  
18 country[7] or the Uniform Code of Military Justice for or based on  
19 the violation of an offense containing elements that are  
20 substantially similar to the elements of an offense listed under  
21 Paragraph (A), (B), (C), (D), (E), (G), or (J), including a [~~but not~~  
22 ~~if the~~] violation that results in a deferred adjudication or the  
23 functional equivalent of a deferred adjudication;

24 (I) the second violation of the laws of another  
25 state, a federally recognized Indian tribe, a territory of the  
26 United States, the United States, or [~~federal law, the laws of~~] a  
27 foreign country[7] or the Uniform Code of Military Justice for or

1 based on the violation of an offense containing elements that are  
2 substantially similar to the elements of the offense of indecent  
3 exposure, but not if the second violation results in a deferred  
4 adjudication or the functional equivalent of a deferred  
5 adjudication; or

6 (J) a violation of Section 33.021 (Online  
7 solicitation of a minor), Penal Code.

8 (6) "Sexually violent offense" means any of the  
9 following offenses committed by a person 17 years of age or older:

10 (A) an offense under Section 21.02 (Continuous  
11 sexual abuse of young child or children), 21.11(a)(1) (Indecency  
12 with a child), 22.011 (Sexual assault), or 22.021 (Aggravated  
13 sexual assault), Penal Code;

14 (B) an offense under Section 43.25 (Sexual  
15 performance by a child), Penal Code;

16 (C) an offense under Section 20.04(a)(4)  
17 (Aggravated kidnapping), Penal Code, if the defendant committed the  
18 offense with intent to violate or abuse the victim sexually;

19 (D) an offense under Section 30.02 (Burglary),  
20 Penal Code, if ~~[the offense is punishable under Subsection (d) of~~  
21 ~~that section and]~~ the defendant committed the offense with intent  
22 to commit a felony listed in Paragraph (A) or (C) of Subdivision  
23 (5); or

24 (E) an offense under the laws of another state, a  
25 federally recognized Indian tribe, a territory of the United  
26 States, the United States, or ~~[federal law, the laws of]~~ a foreign  
27 country~~[7]~~ or the Uniform Code of Military Justice if the offense

1 contains elements that are substantially similar to the elements of  
2 an offense listed under Paragraph (A), (B), (C), or (D).

3 (10) "Extrajurisdictional registrant" means a person  
4 who:

5 (A) is required to register as a sex offender  
6 under:

7 (i) the laws of another state, a federally  
8 recognized Indian tribe, or a territory of the United States with  
9 which the department has entered into a reciprocal registration  
10 agreement;

11 (ii) federal law or the Uniform Code of  
12 Military Justice; or

13 (iii) the laws of a foreign country; and

14 (B) is not otherwise required to register under  
15 this chapter because:

16 (i) the person does not have a reportable  
17 conviction for an offense under the laws of the other state, a  
18 federally recognized Indian tribe, a territory of the United  
19 States, the United States, or [~~federal law, the laws of~~] the foreign  
20 country[~~7~~] or the Uniform Code of Military Justice containing  
21 elements that are substantially similar to the elements of an  
22 offense requiring registration under this chapter; or

23 (ii) the person does not have a reportable  
24 adjudication of delinquent conduct based on a violation of an  
25 offense under the laws of the other state, a federally recognized  
26 Indian tribe, a territory of the United States, the United States,  
27 or [~~federal law, or the laws of~~] the foreign country containing

1 elements that are substantially similar to the elements of an  
2 offense requiring registration under this chapter.

3 SECTION 4. Articles 62.003(a) and (b), Code of Criminal  
4 Procedure, are amended to read as follows:

5 (a) For the purposes of this chapter, the department is  
6 responsible for determining whether an offense under the laws of  
7 another state, a federally recognized Indian tribe, a territory of  
8 the United States, the United States, or [~~federal law, the laws of~~]  
9 a foreign country[~~7~~] or the Uniform Code of Military Justice  
10 contains elements that are substantially similar to the elements of  
11 an offense under the laws of this state.

12 (b) The department annually shall provide or make available  
13 to each prosecuting attorney's office in this state:

14 (1) the criteria used in making a determination under  
15 Subsection (a); and

16 (2) any existing record or compilation of offenses  
17 under the laws of another state, a federally recognized Indian  
18 tribe, a territory of the United States, the United States, and  
19 [~~federal law, the laws of~~] a foreign country[~~7~~] and the Uniform Code  
20 of Military Justice that the department has already determined to  
21 contain elements that are substantially similar to the elements of  
22 offenses under the laws of this state.

23 SECTION 5. Article 62.052(b), Code of Criminal Procedure,  
24 is amended to read as follows:

25 (b) The duty to register for an extrajurisdictional  
26 registrant expires on the date the person's duty to register would  
27 expire under as applicable:

1           (1) the laws of the other state or the federally  
2 recognized Indian tribe, territory of the United States, or foreign  
3 country had the person remained in the applicable jurisdiction; or

4           (2) [~~that state or foreign country, under~~] federal  
5 law[~~7~~] or [~~under~~] the Uniform Code of Military Justice[~~7, as~~  
6 ~~applicable~~].

7           SECTION 6. Article 62.054, Code of Criminal Procedure, is  
8 amended to read as follows:

9           Art. 62.054. CIRCUMSTANCES           REQUIRING           NOTICE           TO  
10 SUPERINTENDENT OR SCHOOL ADMINISTRATOR.   (a) A local law  
11 enforcement authority shall provide notice to the superintendent  
12 and each administrator under Article 62.053(e) or 62.055(f) only  
13 if:

14           (1) the victim was at the time of the offense a child  
15 younger than 17 years of age or a student enrolled in a public or  
16 private secondary school;

17           (2) the person subject to registration is a student  
18 enrolled in a public or private secondary school; or

19           (3) the basis on which the person is subject to  
20 registration is a conviction, a deferred adjudication, or an  
21 adjudication of delinquent conduct for an offense under Section  
22 43.25 or 43.26, Penal Code, or an offense under the laws of another  
23 state, a federally recognized Indian tribe, a territory of the  
24 United States, the United States, or a foreign country [~~federal~~  
25 ~~law~~] or the Uniform Code of Military Justice that contains  
26 elements substantially similar to the elements of an offense under  
27 either of those sections.

1 (b) A local law enforcement authority may not provide notice  
2 to the superintendent or any administrator under Article 62.053(e)  
3 or 62.055(f) if the basis on which the person is subject to  
4 registration is a conviction, a deferred adjudication, or an  
5 adjudication of delinquent conduct for an offense under Section  
6 25.02, Penal Code, or an offense under the laws of another state, a  
7 federally recognized Indian tribe, a territory of the United  
8 States, the United States, or a foreign country [~~federal law,~~] or  
9 the Uniform Code of Military Justice that contains elements  
10 substantially similar to the elements of an offense under that  
11 section.

12 SECTION 7. Articles 62.057(a) and (b), Code of Criminal  
13 Procedure, are amended to read as follows:

14 (a) If the juvenile probation officer, community  
15 supervision and corrections department officer, or parole officer  
16 supervising a person subject to registration under this chapter  
17 receives notice [~~information~~] to the effect that the accuracy or  
18 completeness of any information contained in the person's  
19 registration form has changed or that the person's status has  
20 changed in any manner that affects proper supervision of the  
21 person, including a change in the person's name, physical health,  
22 job or educational status, including higher educational status,  
23 incarceration, or terms of release, the supervising officer shall  
24 promptly notify the appropriate local law enforcement authority or  
25 authorities of that change. If the person required to register  
26 intends to change address, the supervising officer shall notify the  
27 local law enforcement authorities designated by Article



1 62.055(b). Not later than the seventh day after the date the  
2 supervising officer receives the relevant information, the  
3 supervising officer shall notify the local law enforcement  
4 authority of any change in the person's job or educational status in  
5 which the person:

6 (1) becomes employed, begins to carry on a vocation,  
7 or becomes a student at a particular public or private institution  
8 of higher education; or

9 (2) terminates the person's status in that capacity.

10 (b) Not later than the seventh day after the date of the  
11 change, a person subject to registration under this chapter shall  
12 report to the local law enforcement authority designated as the  
13 person's primary registration authority by the department any  
14 change in:

15 (1) the accuracy or completeness of any information  
16 contained in the person's registration form; or

17 (2) the person's name, physical health, or job or  
18 educational status, including higher educational status.

19 SECTION 8. Article 62.301, Code of Criminal Procedure, is  
20 amended by amending Subsection (a) and adding Subsection (c-1) to  
21 read as follows:

22 (a) If eligible under Subsection (b), ~~or~~ (c), or (c-1), a  
23 person required to register under this chapter may petition the  
24 court having jurisdiction over the case for an order exempting the  
25 person from registration under this chapter at any time after the  
26 person's sentencing or after the person is placed on deferred  
27 adjudication community supervision.

1        (c-1)(1) This subsection applies to a person who is:

2                (A) required to register under this chapter only  
3 as a result of a single reportable conviction or adjudication,  
4 other than an adjudication of delinquent conduct, for an offense  
5 under a law described by Article 62.001(5)(H) and containing  
6 elements that are substantially similar to the elements of an  
7 offense under Section 21.11, 22.011, 22.021, or 43.25, Penal Code;  
8 and

9                (B) not required to register as a sex offender  
10 under the law described by Article 62.001(5)(H) or is required to  
11 register as a sex offender under that law but is eligible under that  
12 law to petition a court for an order exempting the person from  
13 registration and has not been denied the exemption.

14                (2) A person to whom this subsection applies is  
15 eligible, in the manner described by Subsection (a), to petition a  
16 district court of the county in which the person's primary  
17 registration authority is located. The court may consider the  
18 petition only if the petition states and the court finds that the  
19 person would have been entitled to the entry of an affirmative  
20 finding under Article 42.017 or Section 5(g), Article 42.12, as  
21 appropriate, had the conviction or placement on deferred  
22 adjudication community supervision occurred under the laws of this  
23 state on or after September 1, 2001.

24        SECTION 9. Article 62.402, Code of Criminal Procedure, is  
25 amended to read as follows:

26        Art. 62.402. DETERMINATION        OF        MINIMUM        REQUIRED  
27 REGISTRATION PERIOD. (a) The department [~~council~~] by rule shall

1 determine the minimum required registration period under the Adam  
2 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Section  
3 16901 et seq.) [~~14071 (Jacob Wetterling Crimes Against Children and~~  
4 ~~Sexually Violent Offender Registration Program)] for each  
5 reportable conviction or adjudication under this chapter, if this  
6 state is to receive the maximum amount of federal money available to  
7 a state as described by that law.~~

8 (b) After determining the minimum required registration  
9 period for each reportable conviction or adjudication under  
10 Subsection (a), the department [~~council~~] shall compile and publish  
11 a list of reportable convictions or adjudications for which a  
12 person must register under this chapter for a period that exceeds  
13 the minimum required registration period under federal law.

14 (c) To the extent possible, the department [~~council~~] shall  
15 periodically verify with the Office of Sex Offender Sentencing,  
16 Monitoring, Apprehending, Registering, and Tracking [~~Bureau of~~  
17 ~~Justice Assistance~~] or another appropriate federal agency the  
18 accuracy of the list of reportable convictions or adjudications  
19 described by Subsection (b).

20 SECTION 10. Section 54.04, Family Code, is amended by  
21 adding Subsection (y) to read as follows:

22 (y) A judge who orders a disposition under this section for  
23 delinquent conduct based on a violation of Section 20.02, Penal  
24 Code, shall make an affirmative finding of fact and enter the  
25 affirmative finding in the order if the judge determines that the  
26 respondent engaged in the conduct with the intent to engage in  
27 conduct the adjudication of which subjects the respondent to

1 registration under Chapter 62.

2           SECTION 11. Article 42.0149, Code of Criminal Procedure,  
3 Section 5(k), Article 42.12, Code of Criminal Procedure, and  
4 Section 54.04(y), Family Code, as added by this Act, apply only to a  
5 judgment of conviction entered on or after the effective date of  
6 this Act, a grant of deferred adjudication made on or after the  
7 effective date of this Act, or a disposition of delinquent conduct  
8 made on or after the effective date of this Act.

9           SECTION 12. The change in law made by this Act in amending  
10 Chapter 62, Code of Criminal Procedure, applies to any person who,  
11 on or after the effective date of this Act, is subject to  
12 registration under that chapter regardless of whether the offense  
13 or conduct for which the person is subject to registration was  
14 committed or engaged in before, on, or after the effective date of  
15 this Act.

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