

BILL ANALYSIS

C.S.H.B. 227
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that the consequences of having to register as sex offender can be very severe, as a registrant is often prohibited from being in the presence of younger siblings or family members, is extremely limited in where the registrant may live, is prevented from being employed at several types of jobs, and may experience difficulty getting certain jobs.

Currently, a judge has the discretion to exempt an eligible defendant from having to register as a sex offender for life if a certain affirmative finding regarding an age-based offense has been entered for the defendant. C.S.H.B. 227 seeks to exempt certain teenage offenders who are convicted of a certain sexual offense involving consensual sexual conduct with another teenager from the requirement of registering as a sex offender for life in Texas. There is concern that the monitoring and supervision of these offenders wastes law enforcement resources and distracts law enforcement from closer scrutiny of the sex offender for whom registration was intended, those who are dangerous to Texas' children.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority previously granted to the Council on Sex Offender Treatment is transferred to the Department of Public Safety in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 227 amends the Code of Criminal Procedure to require the judge in a trial of a certain sexual offense to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that the conviction is based solely on the ages of the defendant and the victim or intended victim and that at the time of the offense, the defendant was not more than four 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 15, rather than 13, years of age. The bill removes the offenses of continuous sexual abuse of a young child or children, aggravated sexual assault, and sexual performance by a child from the sexual offenses to which such a requirement applies.

C.S.H.B. 227 requires a judge who places a defendant charged with a certain sexual offense on deferred adjudication community supervision 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 the charge is based solely on the ages of the defendant and victim or intended victim and that at the time of the offense the defendant was not more than four 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 15, rather than 13, years of age. The bill removes the offense of aggravated sexual assault and the offense of sexual performance by a child from the sexual offenses to which such a requirement applies.

C.S.H.B. 227 authorizes an eligible young adult sex offender for whom a court has entered an affirmative finding regarding an age-based offense and who meets certain criteria to petition the

court having jurisdiction over the case for an order exempting the person from sex offender registration at any time on or after the date of the person's sentencing or the date the person is placed on deferred adjudication community supervision, rather than only after the person's sentencing or placement on the supervision. The bill makes a defendant who is convicted of or placed on deferred adjudication community supervision for a certain sexual offense before September 1, 2011, rather than September 1, 2001, eligible to petition the court for an order exempting the defendant from sex offender registration. The bill removes a defendant who is convicted of or placed on deferred adjudication community supervision for aggravated sexual assault or sexual performance by a child from such eligible defendants. The bill authorizes the court to consider such petition only if the petition states and the court finds that the defendant would have been entitled to the entry of an affirmative finding regarding an age-based offense had the conviction or placement on deferred adjudication community supervision occurred after September 1, 2011, rather than September 1, 2001.

C.S.H.B. 227 authorizes the court, at a hearing on a petition for an order exempting the defendant from sex offender registration, to consider testimony from the victim or intended victim, or a member of the victim's or intended victim's family, concerning the requested exemption; the relationship between the victim or intended victim and the petitioner at the time of the hearing; and any other evidence that the court determines is relevant and admissible. The bill includes among the conditions that must be met before a court may issue an order exempting a young adult sex offender from sex offender registration that it appears by a preponderance of the evidence that the exemption is in the best interest of the victim or intended victim and that the exemption is in the best interest of justice. The bill removes from the condition that the exemption does not threaten public safety the requirement that such condition be presented by a registered sex offender treatment provider.

C.S.H.B. 227 requires the Department of Public Safety (DPS), rather than the Council on Sex Offender Treatment, to determine by rule the minimum required registration period under federal law, rather than under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, for each reportable conviction or adjudication under the state sex offender registration program. The bill removes the specification that such a determination be based on whether the state is to receive the maximum amount of federal money available to a state under that federal law. The bill requires DPS, rather than the council, to compile and publish a list of reportable convictions or adjudications for which a person must register under the sex offender registration program and to periodically verify to the extent possible the accuracy of that list with the United States Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, rather than with the Bureau of Justice Assistance, or another appropriate federal agency or office.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 227 differs from the original by requiring the judge in a trial of a certain sexual offense to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that, among other facts, at the time of the offense, the defendant was not more than four years older than the victim or intended victim and the victim or intended victim was at least 15 years of age, rather than at least 14 years of age, as in the original. The substitute differs from the original by removing continuous sexual abuse of a young child or children, aggravated sexual assault, and sexual performance by a child from the sexual offenses to which that requirement applies, whereas the original removes only continuous sexual abuse of a young child or children.

C.S.H.B. 227 differs from the original by requiring a judge who places a defendant charged with

a certain sexual offense on deferred adjudication community supervision 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, among other facts, at the time of the offense, the defendant was not more than four years older than the victim or intended victim and the victim or intended victim was at least 15 years of age, rather than at least 14 years of age, as in the original. The substitute contains a provision not included in the original removing aggravated sexual assault and sexual performance by a child from the sexual offenses to which that requirement applies.

C.S.H.B. 227 differs from the original by removing a defendant who before September 1, 2011, is convicted of or placed on deferred adjudication community supervision for an offense of aggravated sexual assault or sexual performance by a child from the defendants eligible to petition the court for an order exempting the defendant from sex offender registration, whereas the original retains such a defendant's eligibility. The substitute contains provisions not included in the original authorizing the court, at a hearing on a petition exempting a certain young adult sex offender from sex offender registration, to consider certain testimony and other evidence.

C.S.H.B. 227 differs from the original by requiring the Department of Public Safety to determine by rule the minimum required registration period under federal law, rather than under the federal Adam Walsh Child Protection and Safety Act of 2006, as in the original, for each reportable conviction or adjudication under the state sex offender registration program. The substitute differs from the original by removing the specification that such a determination be based on whether the state is to receive the maximum amount of federal money available to a state under that federal law, whereas the original retains that specification.