

BILL ANALYSIS

S.B. 198
By: West
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Under Texas law, consensual sex does not exist when one of the subjects involved is a minor. State law allows a defense to prosecution if no more than a three-year age difference exists between the victim and the defendant in determining whether statutory rape has been committed. Texas law mandates lifetime sex offender registration, with few exceptions, for any adult (18 or older) convicted of an offense under Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure.

Hypothetically, if a young man who is 18, 19, or 20 years of age enters into or continues a sexual relationship with a female under age 17, and is convicted of the offense of sexual assault of a minor, he would be required to register as a sex offender for the remainder of his life.

Texas law makes no distinction between a non-violent, consent-based offense and the registration requirements of a pedophile. This has come under criticism by advocates and family members of defendants. A young defendant who is convicted of this type of offense must register under Chapter 62, and as such, faces diminished future prospects.

We believe that by removing non-dangerous offenders from the registry, law enforcement resources could be better directed at serious and dangerous criminals. This position has been supported by local law enforcement and advocacy groups.

S.B. 198 provides options that may allow a young adult who has been convicted or placed under supervision for certain offenses involving an underage victim to be able to petition the courts to be released from registration requirements.

S.B. 198 amends current law relating to exempting persons who are convicted of certain sexual offenses from registering as a sex offender in this state.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Council on Sex Offender Treatment is transferred to the Department of Public Safety of the State of Texas in SECTION 4 (Article 62.402, Code of Criminal Procedure) of this bill.

ANALYSIS

SECTION 1. Amends Article 42.017, Code of Criminal Procedure, as follows:

Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. Requires the judge in the trial of an offense under Section 21.11 (Indecency with a Child) or 22.011 (Sexual Assault), Penal Code, rather than Section 21.02 (Continuous Sexual Abuse of a Young Child or Children), 21.11, 22.011, 22.021 (Aggravated Sexual Assault), or 43.25 (Sexual Performance by a Child), Penal Code, to 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, and the victim or intended victim was at least 15 years of age, rather than that the defendant was younger than 19 years of age and the victim was at least 13 years of age; and

(2) Makes no changes to this subdivision.

SECTION 2. Amends Section 5(g), Article 42.12, Code of Criminal Procedure, as follows:

(g) Requires a judge, if the judge places a defendant charged with an offense under Section 21.11 or 22.011, Penal Code, rather than Section 21.11, 21.011, 22.021, or 43.25, Penal Code, on community supervision under this section, 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:

(1) 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; and

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

SECTION 3. Amends Articles 62.301, Code of Criminal Procedure, by amending Subsections (a), (c), and (d) and adding Subsection (c-1), as follows:

(a) Authorizes a person required to register under this chapter, if eligible under Subsection (b) or (c), to petition the court having jurisdiction over the case for an order exempting the person from registration under this chapter 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, as applicable.

(c) Provides that a defendant who before September 1, 2011, rather than 2001, is convicted of or placed on deferred adjudication community supervision for an offense under Section 21.11 or 22.011, Penal Code, rather than Section 21.11, 21.011, 22.021, or 43.25, Penal Code, is eligible to petition the court as described by Subsection (a). Makes a conforming change.

(c-1) Authorizes the court, at a hearing on the petition described by Subsection (a), to consider:

(1) testimony from the victim or intended victim, or a member of the victim's or intended victim's family, concerning the requested exemption;

(2) the relationship between the victim or intended victim and the petitioner at the time of the hearing; and

(3) any other evidence that the court determines is relevant and admissible.

(d) Authorizes a court, after a hearing on the petition described by Subsection (a), to issue an order exempting the person from registration under this chapter if it appears by a preponderance of the evidence that:

(1) the exemption does not threaten public safety;

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

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

Deletes existing text relating to a preponderance of the evidence as presented by a registered sex offender treatment provider.

SECTION 4. Amends Article 62.402, Code of Criminal Procedure, as follows:

Art. 62.402. DETERMINATION OF MINIMUM REQUIRED REGISTRATION PERIOD. (a) Requires the Department of Public Safety of the State of Texas (DPS), rather than the Council on Sex Offender Treatment (TCSOT), by rule to determine the minimum required registration period under federal law for each reportable conviction or adjudication under this chapter, rather than under 42 U.S.C. Section 14071 (Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program) for each reportable conviction or adjudication under this chapter, if this state is to receive the maximum amount of federal money available to a state as described by that law.

(b) Makes a conforming change.

(c) Requires DPS, rather than TCSOT, to the extent possible, to periodically verify with the United States Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, rather than the Bureau of Justice Assistance, or another appropriate federal agency or office the accuracy of the list of reportable convictions or adjudications described by Subsection (b).

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

SECTION 6. Makes application of Article 42.017 and Section 5(g), Article 42.12, Code of Criminal Procedure, as amended by this Act, prospective.

EFFECTIVE DATE

September 1, 2011.