

By: Smith of Tarrant

H.B. No. 227

A BILL TO BE ENTITLED

AN ACT

relating to exempting persons who are convicted of certain sexual offenses from registering as a sex offender in this state.

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

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

Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the trial of an offense under Section [~~21.027~~] 21.11, 22.011, 22.021, or 43.25, Penal Code, the judge shall 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 [~~younger than 19 years of age~~] and the victim or intended victim was at least 14 [~~13~~] years of age; and

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

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

(g) If a judge places on community supervision under this section a defendant charged with an offense under Section 21.11, 22.011, 22.021, or 43.25, Penal Code, the judge shall make an affirmative finding of fact and file a statement of that

1 affirmative finding with the papers in the case if the judge
2 determines that:

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

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

10 SECTION 3. Articles 62.301(a), (c), and (d), Code of
11 Criminal Procedure, are amended to read as follows:

12 (a) If eligible under Subsection (b) or (c), a person
13 required to register under this chapter may petition the court
14 having jurisdiction over the case for an order exempting the person
15 from registration under this chapter at any time on or after the
16 date of the person's sentencing or [~~after~~] the date the person is
17 placed on deferred adjudication community supervision, as
18 applicable.

19 (c) A defendant who before September 1, 2011 [~~2001~~], is
20 convicted of or placed on deferred adjudication community
21 supervision for an offense under Section 21.11, 22.011, 22.021, or
22 43.25, Penal Code, is eligible to petition the court as described by
23 Subsection (a). The court may consider the petition only if the
24 petition states and the court finds that the defendant would have
25 been entitled to the entry of an affirmative finding under Article
26 42.017 or Section 5(g), Article 42.12, as appropriate, had the
27 conviction or placement on deferred adjudication community

1 supervision occurred after September 1, 2011 [~~2001~~].

2 (d) After a hearing on the petition described by Subsection
3 (a), the court may issue an order exempting the person from
4 registration under this chapter if it appears by a preponderance of
5 the evidence that:

6 (1) [~~as presented by a registered sex offender~~
7 ~~treatment provider, that~~] the exemption does not threaten public
8 safety; [~~and~~]

9 (2) [~~that~~] the person's conduct did not occur without
10 the consent of the victim or intended victim as described by Section
11 22.011(b), Penal Code;

12 (3) the exemption is in the best interest of the victim
13 or intended victim; and

14 (4) the exemption is in the best interest of justice.

15 SECTION 4. Article 62.402, Code of Criminal Procedure, is
16 amended to read as follows:

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

26 (b) After determining the minimum required registration
27 period for each reportable conviction or adjudication under

1 Subsection (a), the department [~~council~~] shall compile and publish
2 a list of reportable convictions or adjudications for which a
3 person must register under this chapter for a period that exceeds
4 the minimum required registration period under federal law.

5 (c) To the extent possible, the department [~~council~~] shall
6 periodically verify with the United States Department of Justice's
7 Office of Sex Offender Sentencing, Monitoring, Apprehending,
8 Registering, and Tracking [~~Bureau of Justice Assistance~~] or another
9 appropriate federal agency or office the accuracy of the list of
10 reportable convictions or adjudications described by Subsection
11 (b).

12 SECTION 5. The changes in law made by this Act in amending
13 Chapter 62, Code of Criminal Procedure, apply to any person who, on
14 or after the effective date of this Act, is required to register
15 under that chapter, regardless of whether the offense or conduct
16 for which the person is required to register occurs before, on, or
17 after the effective date of this Act.

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

23 SECTION 7. This Act takes effect September 1, 2011.