

By: West
(Smith of Tarrant)

S.B. No. 198

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 or[~~7~~] 22.011[~~7~~ ~~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 15 [~~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. Subsection (g), Section 5, 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 or[~~7~~] 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 15 ~~[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. Article 62.301, Code of Criminal Procedure, is
11 amended by amending Subsections (a), (c), and (d) and adding
12 Subsection (c-1) to read as follows:

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

20 (c) A defendant who before September 1, 2011 ~~[2001]~~, is
21 convicted of or placed on deferred adjudication community
22 supervision for an offense under Section 21.11 or ~~[7]~~ 22.011,
23 ~~[22.021, or 43.257]~~ Penal Code, is eligible to petition the court as
24 described by Subsection (a). The court may consider the petition
25 only if the petition states and the court finds that the defendant
26 would have been entitled to the entry of an affirmative finding
27 under Article 42.017 or Section 5(g), Article 42.12, as

1 appropriate, had the conviction or placement on deferred
2 adjudication community supervision occurred after September 1,
3 2011 [2001].

4 (c-1) At a hearing on the petition described by Subsection
5 (a), the court may consider:

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

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

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

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

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

20 (2) [~~that~~] the person's conduct did not occur without
21 the consent of the victim or intended victim as described by Section
22 22.011(b), Penal Code;

23 (3) the exemption is in the best interest of the victim
24 or intended victim; and

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

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

1 Art. 62.402. DETERMINATION OF MINIMUM REQUIRED
2 REGISTRATION PERIOD. (a) The department [~~council~~] by rule shall
3 determine the minimum required registration period under federal
4 law [~~42 U.S.C. Section 14071 (Jacob Wetterling Crimes Against~~
5 ~~Children and Sexually Violent Offender Registration Program)] for~~
6 each reportable conviction or adjudication under this chapter [~~, if~~
7 ~~this state is to receive the maximum amount of federal money~~
8 ~~available to a state as described by that law]~~.

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

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

22 SECTION 5. The changes in law made by this Act in amending
23 Chapter 62, Code of Criminal Procedure, apply to any person who, on
24 or after the effective date of this Act, is required to register
25 under that chapter, regardless of whether the offense or conduct
26 for which the person is required to register occurs before, on, or
27 after the effective date of this Act.

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

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