

1-1 By: West S.B. No. 198  
1-2 (In the Senate - Filed November 9, 2010; January 31, 2011,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 April 11, 2011, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 6, Nays 1; April 11, 2011,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 198 By: Huffman

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to exempting persons who are convicted of certain sexual  
1-11 offenses from registering as a sex offender in this state.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 42.017, Code of Criminal Procedure, is  
1-14 amended to read as follows:

1-15 Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the  
1-16 trial of an offense under Section ~~[21.02]~~ 21.11 or ~~[~~ 22.011~~]~~  
1-17 ~~[22.021, or 43.25]~~, Penal Code, the judge shall make an affirmative  
1-18 finding of fact and enter the affirmative finding in the judgment in  
1-19 the case if the judge determines that:

1-20 (1) at the time of the offense, the defendant was not  
1-21 more than four years older than the victim or intended victim  
1-22 [younger than 19 years of age] and the victim or intended victim was  
1-23 at least 15 ~~[13]~~ years of age; and

1-24 (2) the conviction is based solely on the ages of the  
1-25 defendant and the victim or intended victim at the time of the  
1-26 offense.

1-27 SECTION 2. Subsection (g), Section 5, Article 42.12, Code  
1-28 of Criminal Procedure, is amended to read as follows:

1-29 (g) If a judge places on community supervision under this  
1-30 section a defendant charged with an offense under Section 21.11  
1-31 or ~~[~~ 22.011, ~~[22.021, or 43.25]~~ Penal Code, the judge shall make  
1-32 an affirmative finding of fact and file a statement of that  
1-33 affirmative finding with the papers in the case if the judge  
1-34 determines that:

1-35 (1) at the time of the offense, the defendant was not  
1-36 more than four years older than the victim or intended victim  
1-37 [younger than 19 years of age] and the victim or intended victim was  
1-38 at least 15 ~~[13]~~ years of age; and

1-39 (2) the charge to which the plea is entered under this  
1-40 section is based solely on the ages of the defendant and the victim  
1-41 or intended victim at the time of the offense.

1-42 SECTION 3. Article 62.301, Code of Criminal Procedure, is  
1-43 amended by amending Subsections (a), (c), and (d) and adding  
1-44 Subsection (c-1) to read as follows:

1-45 (a) If eligible under Subsection (b) or (c), a person  
1-46 required to register under this chapter may petition the court  
1-47 having jurisdiction over the case for an order exempting the person  
1-48 from registration under this chapter at any time on or after the  
1-49 date of the person's sentencing or ~~[after]~~ the date the person is  
1-50 placed on deferred adjudication community supervision, as  
1-51 applicable.

1-52 (c) A defendant who before September 1, 2011 ~~[2001]~~, is  
1-53 convicted of or placed on deferred adjudication community  
1-54 supervision for an offense under Section 21.11 or ~~[~~ 22.011,  
1-55 ~~[22.021, or 43.25]~~ Penal Code, is eligible to petition the court as  
1-56 described by Subsection (a). The court may consider the petition  
1-57 only if the petition states and the court finds that the defendant  
1-58 would have been entitled to the entry of an affirmative finding  
1-59 under Article 42.017 or Section 5(g), Article 42.12, as  
1-60 appropriate, had the conviction or placement on deferred  
1-61 adjudication community supervision occurred after September 1,  
1-62 2011 ~~[2001]~~.

1-63 (c-1) At a hearing on the petition described by Subsection

2-1 (a), the court may consider:  
2-2 (1) testimony from the victim or intended victim, or a  
2-3 member of the victim's or intended victim's family, concerning the  
2-4 requested exemption;

2-5 (2) the relationship between the victim or intended  
2-6 victim and the petitioner at the time of the hearing; and

2-7 (3) any other evidence that the court determines is  
2-8 relevant and admissible.

2-9 (d) After a hearing on the petition described by Subsection  
2-10 (a), the court may issue an order exempting the person from  
2-11 registration under this chapter if it appears by a preponderance of  
2-12 the evidence that:

2-13 (1) ~~[as presented by a registered sex offender~~  
2-14 ~~treatment provider, that]~~ the exemption does not threaten public  
2-15 safety; ~~and]~~

2-16 (2) ~~[that]~~ the person's conduct did not occur without  
2-17 the consent of the victim or intended victim as described by Section  
2-18 22.011(b), Penal Code;

2-19 (3) the exemption is in the best interest of the victim  
2-20 or intended victim; and

2-21 (4) the exemption is in the best interest of justice.

2-22 SECTION 4. Article 62.402, Code of Criminal Procedure, is  
2-23 amended to read as follows:

2-24 Art. 62.402. DETERMINATION OF MINIMUM REQUIRED  
2-25 REGISTRATION PERIOD. (a) The department ~~[council]~~ by rule shall  
2-26 determine the minimum required registration period under federal  
2-27 law ~~[42 U.S.C. Section 14071 (Jacob Wetterling Crimes Against~~  
2-28 ~~Children and Sexually Violent Offender Registration Program)]~~ for  
2-29 each reportable conviction or adjudication under this chapter~~[, if~~  
2-30 ~~this state is to receive the maximum amount of federal money~~  
2-31 ~~available to a state as described by that law].~~

2-32 (b) After determining the minimum required registration  
2-33 period for each reportable conviction or adjudication under  
2-34 Subsection (a), the department ~~[council]~~ shall compile and publish  
2-35 a list of reportable convictions or adjudications for which a  
2-36 person must register under this chapter for a period that exceeds  
2-37 the minimum required registration period under federal law.

2-38 (c) To the extent possible, the department ~~[council]~~ shall  
2-39 periodically verify with the United States Department of Justice's  
2-40 Office of Sex Offender Sentencing, Monitoring, Apprehending,  
2-41 Registering, and Tracking [Bureau of Justice Assistance] or another  
2-42 appropriate federal agency or office the accuracy of the list of  
2-43 reportable convictions or adjudications described by Subsection  
2-44 (b).

2-45 SECTION 5. The changes in law made by this Act in amending  
2-46 Chapter 62, Code of Criminal Procedure, apply to any person who, on  
2-47 or after the effective date of this Act, is required to register  
2-48 under that chapter, regardless of whether the offense or conduct  
2-49 for which the person is required to register occurs before, on, or  
2-50 after the effective date of this Act.

2-51 SECTION 6. Article 42.017 and Subsection (g), Section 5,  
2-52 Article 42.12, Code of Criminal Procedure, as amended by this Act,  
2-53 apply only to a judgment of conviction entered on or after the  
2-54 effective date of this Act or a grant of deferred adjudication made  
2-55 on or after the effective date of this Act.

2-56 SECTION 7. This Act takes effect September 1, 2011.

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