

By: West

S.B. No. 1366

A BILL TO BE ENTITLED

AN ACT

relating to the prosecution and registration of, and regulation concerning, sex offenders in this state.

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

ARTICLE 1

SECTION 1.001. 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 1.002. 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

1 affirmative finding of fact and file a statement of that
2 affirmative finding with the papers in the case if the judge
3 determines that:

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

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

11 SECTION 1.003. Subchapter A, Chapter 62, Code of Criminal
12 Procedure, is amended by amending Article 62.005 and adding Article
13 62.0051 to read as follows:

14 Art. 62.005. CENTRAL DATABASE FOR LAW ENFORCEMENT,
15 LICENSING AUTHORITIES, AND INSTITUTIONS OF HIGHER EDUCATION~~[+~~
16 ~~PUBLIC INFORMATION]~~. (a) The department shall maintain a
17 computerized central database for the use of law enforcement
18 authorities, licensing authorities, and public or private
19 institutions of higher education in this state. The computerized
20 central database must contain, for each person required to register
21 under this chapter, [containing] the information required for
22 registration under this chapter and any existing~~[. The department~~
23 ~~may include in the computerized central database the]~~ numeric risk
24 level assigned to the ~~[a]~~ person under this chapter.

25 (b) ~~[The information contained in the database, including~~
26 ~~the numeric risk level assigned to a person under this chapter, is~~
27 ~~public information, with the exception of any information:~~

1 ~~[(1) regarding the person's social security number or~~
2 ~~driver's license number, or any home, work, or cellular telephone~~
3 ~~number of the person;~~

4 ~~[(2) that is described by Article 62.051(c)(7) or~~
5 ~~required by the department under Article 62.051(c)(8); or~~

6 ~~[(3) that would identify the victim of the offense for~~
7 ~~which the person is subject to registration.~~

8 ~~[(c)]~~ Notwithstanding Chapter 730, Transportation Code, the
9 department shall maintain in the database~~[, and shall post on any~~
10 ~~department website related to the database,]~~ any photograph
11 existing for each ~~[of the]~~ person required to register under this
12 chapter that is available through the process for obtaining or
13 renewing a personal identification certificate or driver's license
14 under Section 521.103 or 521.272, Transportation Code. The
15 department shall update the photographs ~~[photograph]~~ in the
16 database ~~[and on the website]~~ annually or as the photographs
17 ~~[photograph]~~ otherwise become ~~[becomes]~~ available through the
18 person's renewal of ~~[process for]~~ the certificate or license.

19 ~~[(d)]~~ A local law enforcement authority shall release
20 ~~public information described under Subsection (b) to any person who~~
21 ~~requests the information from the authority. The authority may~~
22 ~~charge the person a fee not to exceed the amount reasonably~~
23 ~~necessary to cover the administrative costs associated with the~~
24 ~~authority's release of information to the person under this~~
25 ~~subsection.~~

26 ~~[(e)]~~ The department shall provide a licensing authority
27 with notice of each ~~[any]~~ person required to register under this

1 chapter who holds or seeks a license that is issued by the
2 authority. The department shall provide the notice required by
3 this subsection as the applicable licensing information becomes
4 available through the person's registration or verification of
5 registration.

6 (d) [~~(f)~~] On the written request of a licensing authority
7 that identifies an individual and states that the individual is an
8 applicant for or a holder of a license issued by the authority, the
9 department shall release to the authority any information that is
10 contained in the central database and pertains to the individual,
11 including information that is not public information under Article
12 62.0051(b) [~~described by Subsection (a) to the licensing~~
13 ~~authority~~].

14 (e) [~~(g)~~] For the purposes of Subsections (c) [~~(e)~~] and (d)
15 [~~(f)~~]:

16 (1) "License" means a license, certificate,
17 registration, permit, or other authorization that:

18 (A) is issued by a licensing authority; and

19 (B) a person must obtain to practice or engage in
20 a particular business, occupation, or profession.

21 (2) "Licensing authority" means a department,
22 commission, board, office, or other agency of the state or a
23 political subdivision of the state that issues a license.

24 (f) [~~(h)~~] Not later than the third day after the date on
25 which the applicable information becomes available through the
26 person's registration or verification of registration or under
27 Article 62.058, the department shall send notice of each [~~any~~]

1 person required to register under this chapter who is or will be
2 employed, carrying on a vocation, or a student at a public or
3 private institution of higher education in this state to:

4 (1) for an institution in this state:

5 (A) the authority for campus security for that
6 institution; or

7 (B) if an authority for campus security for that
8 institution does not exist, the local law enforcement authority of:

9 (i) the municipality in which the
10 institution is located; or

11 (ii) the county in which the institution is
12 located, if the institution is not located in a municipality; or

13 (2) for an institution in another state, any existing
14 authority for campus security at that institution.

15 (g) [~~(i)~~] On the written request of an institution of higher
16 education described by Subsection (f) [~~(h)~~] that identifies an
17 individual and states that the individual has applied to work or
18 study at the institution, the department shall release to the
19 institution any information that is contained in the central
20 database and pertains to the individual, including information that
21 is not public information under Article 62.0051(b) [~~described by~~
22 ~~Subsection (a) to the institution~~].

23 (h) [~~(j)~~] The department, for law enforcement purposes,
24 shall release all relevant information that is contained in the
25 central database [~~described by Subsection (a)~~], including
26 information that is not public information under Article 62.0051(b)
27 [~~Subsection (b)~~], to a peace officer, an employee of a local law

1 enforcement authority, or the attorney general on the request of
2 the applicable person or entity.

3 Art. 62.0051. PUBLIC WEBSITE; PUBLIC INFORMATION. (a)
4 This article applies only to information concerning a person
5 required to register under this chapter who:

6 (1) has not yet been assigned a numeric risk level
7 under the sex offender screening tool described by Article 62.007;

8 (2) has been assigned a risk level of two or three
9 under the screening tool; or

10 (3) has been assigned a risk level of one under the
11 screening tool and has committed an offense under Article 62.102.

12 (b) The department shall maintain a website that is
13 accessible to the public at no charge and that contains, for each
14 person described by Subsection (a) who is required to register
15 under this chapter, the information required for registration under
16 this chapter and any existing numeric risk level assigned to the
17 person under this chapter.

18 (c) The department shall use the most recent information
19 contained in the computerized central database maintained under
20 Article 62.005 to complete the public website maintained under this
21 article, except that the department may not include the following
22 information on the public website:

23 (1) a person's social security number or driver's
24 license number, or any home, work, or cellular telephone number
25 used by the person;

26 (2) any online identifiers established or used by the
27 person; or

1 (3) information that would identify the victim of the
2 offense for which the person is subject to registration.

3 (d) The public website maintained under this article must
4 contain the following information concerning a person described by
5 Subsection (a) who is required to register under this chapter:

6 (1) the person's age on the date of each offense or
7 instance of conduct that resulted in a reportable conviction or
8 adjudication;

9 (2) the person's relationship, if any, to the victim of
10 each offense or instance of conduct that resulted in a reportable
11 conviction or adjudication;

12 (3) whether the person used or exhibited a deadly
13 weapon, as defined by Section 1.07, Penal Code, while committing
14 any offense or engaging in any instance of conduct that resulted in
15 a reportable conviction or adjudication;

16 (4) the offense with which the person was originally
17 charged that resulted in a reportable conviction or adjudication or
18 the conduct in which the person was originally alleged to have
19 engaged that resulted in a reportable adjudication;

20 (5) whether the person is required to register under
21 this chapter as the result of a single reportable conviction or
22 adjudication or of multiple reportable convictions or
23 adjudications;

24 (6) if the person is required to register as the result
25 of multiple reportable convictions or adjudications, any
26 commonalities between the offenses or instances of conduct that
27 resulted in reportable convictions or adjudications, including

1 commonalities among victim characteristics and the manner or means
2 in which the offenses were committed or in which the conduct was
3 engaged;

4 (7) the term of, as applicable, the person's community
5 supervision, juvenile probation, imprisonment, or commitment, and
6 whether the person has been released on parole, to mandatory
7 supervision, or under supervision; and

8 (8) if the person has been released on parole or under
9 supervision, the contact information for the agency or officer
10 supervising the person.

11 (e) The department shall remove any information to which
12 this article does not apply as soon as practicable after September
13 1, 2011, or as otherwise required under Subchapter I.

14 (f) The information displayed on the public website is
15 public information.

16 SECTION 1.004. Subchapter I, Chapter 62, Code of Criminal
17 Procedure, is amended to read as follows:

18 SUBCHAPTER I. EARLY TERMINATION OF CERTAIN PERSONS'
19 OBLIGATION TO REGISTER; DETERMINATION OF NUMERIC RISK LEVEL FOR
20 CERTAIN PERSONS

21 Art. 62.401. DEFINITION. In this subchapter, "council"
22 means the Council on Sex Offender Treatment.

23 Art. 62.402. [~~DETERMINATION OF MINIMUM REQUIRED~~
24 ~~REGISTRATION PERIOD.~~ (a) ~~The council by rule shall determine the~~
25 ~~minimum required registration period under 42 U.S.C. Section 14071~~
26 ~~(Jacob Wetterling Crimes Against Children and Sexually Violent~~
27 ~~Offender Registration Program) for each reportable conviction or~~

1 ~~adjudication under this chapter, if this state is to receive the~~
2 ~~maximum amount of federal money available to a state as described by~~
3 ~~that law.~~

4 ~~[(b) After determining the minimum required registration~~
5 ~~period for each reportable conviction or adjudication under~~
6 ~~Subsection (a), the council shall compile and publish a list of~~
7 ~~reportable convictions or adjudications for which a person must~~
8 ~~register under this chapter for a period that exceeds the minimum~~
9 ~~required registration period under federal law.~~

10 ~~[(c) To the extent possible, the council shall periodically~~
11 ~~verify with the Bureau of Justice Assistance or another appropriate~~
12 ~~federal agency the accuracy of the list of reportable convictions~~
13 ~~or adjudications described by Subsection (b).~~

14 ~~[Art. 62.403.]~~ INDIVIDUAL RISK ASSESSMENT. (a) The
15 council by rule shall establish, develop, or adopt an individual
16 risk assessment tool or a group of individual risk assessment tools
17 that:

18 (1) evaluates the criminal history of a person
19 required to register under this chapter; and

20 (2) seeks to predict:

21 (A) the likelihood that the person will engage in
22 criminal activity that may result in the person receiving a second
23 or subsequent reportable adjudication or conviction; and

24 (B) the continuing danger, if any, that the
25 person poses to the community.

26 (b) On the written request of a person with a single
27 reportable adjudication or conviction ~~[that appears on the list~~

1 ~~published under Article 62.402(b)]~~, the council shall:

2 (1) evaluate the person using the individual risk
3 assessment tool or group of individual risk assessment tools
4 established, developed, or adopted under Subsection (a); and

5 (2) provide to the person a written report detailing
6 the outcome of an evaluation conducted under Subdivision (1).

7 (c) An individual risk assessment provided to a person under
8 this subchapter is confidential and is not subject to disclosure
9 under Chapter 552, Government Code.

10 Art. 62.403 [~~62.404~~]. MOTION FOR EARLY TERMINATION OR FOR
11 DETERMINATION OF NUMERIC RISK LEVEL. (a) A person required to
12 register under this chapter who has requested and received an
13 individual risk assessment under Article 62.402 [~~62.403~~] may file
14 with the trial court that sentenced the person for the reportable
15 conviction or adjudication a motion for:

16 (1) early termination of the person's obligation to
17 register under this chapter; or

18 (2) if the person has not yet been assigned a numeric
19 risk level under the sex offender screening tool described by
20 Article 62.007, a determination of the person's risk level under
21 that screening tool.

22 (b) A motion filed under this article must be accompanied by
23 [+

24 [~~(1) a written explanation of how the reportable~~
25 ~~conviction or adjudication giving rise to the movant's registration~~
26 ~~under this chapter qualifies as a reportable conviction or~~
27 ~~adjudication that appears on the list published under Article~~

1 ~~62.402(b)~~, and

2 [~~2~~] a certified copy of a written report detailing
3 the outcome of an individual risk assessment evaluation conducted
4 under Article 62.402(b)(1) [~~62.403(b)(1)~~].

5 Art. 62.404 [~~62.405~~]. HEARING ON MOTION [~~PETITION~~]. (a)
6 After reviewing a motion filed with the court under Article 62.403
7 [~~62.404~~], the court shall [~~may~~]:

8 (1) deny without a hearing the movant's request [~~for~~
9 ~~early termination~~]; or

10 (2) hold a hearing on the motion to determine whether
11 to grant or deny the motion.

12 (b) The court may not grant a motion filed under Article
13 62.403 [~~62.404~~] if [~~+~~

14 [~~1~~] the motion is not accompanied by a certified
15 copy of a written report detailing the outcome of an individual risk
16 assessment evaluation conducted under Article 62.402(b)(1).

17 (c) The court may not grant a motion for early termination
18 if, after considering the factors described by Subsection (d), [~~the~~
19 ~~documents required under Article 62.404(b)~~], or

20 [~~2~~] the court determines that an early termination
21 of the movant's obligation to register under this chapter would
22 pose a threat to public safety [~~the reportable conviction or~~
23 ~~adjudication for which the movant is required to register under~~
24 ~~this chapter is not a reportable conviction or adjudication for~~
25 ~~which the movant is required to register for a period that exceeds~~
26 ~~the minimum required registration period under federal law~~].

27 (d) In determining whether to grant or deny a motion for

1 early termination, the court shall consider, if applicable:

2 (1) the severity of the offense or instance of conduct
3 that resulted in the reportable conviction or adjudication;

4 (2) the number of victims of the offense or instance of
5 conduct that resulted in the reportable conviction or adjudication;

6 (3) the movant's compliance with any conditions of
7 community supervision, juvenile probation, parole, mandatory
8 supervision, or release under supervision;

9 (4) the length of time since the date of the offense
10 or instance of conduct that resulted in the reportable conviction
11 or adjudication;

12 (5) whether the movant is participating in, or has
13 successfully completed, a sex offender treatment program or another
14 treatment or rehabilitative program, including substance abuse
15 counseling and treatment;

16 (6) whether the movant has stable employment and
17 housing;

18 (7) the extent to which the movant has significant
19 ties to the community and has personal support systems;

20 (8) any risk assessments or evaluations performed with
21 respect to the movant by qualified individuals;

22 (9) any polygraph examination of the movant concerning
23 the movant's reportable conviction or adjudication;

24 (10) the age of the movant;

25 (11) whether the movant has any physical disabilities
26 that prevent the movant from reoffending;

27 (12) a statement from the victim, taken or given near

1 the date on which the motion for early termination was filed,
2 concerning whether an early termination of the movant's obligation
3 to register under this chapter would cause the victim to feel
4 threatened or otherwise unsafe;

5 (13) a statement from a correctional officer, peace
6 officer, or treatment provider with knowledge of the movant and the
7 offense or instance of conduct that resulted in the reportable
8 conviction or adjudication; and

9 (14) any other factors the court determines to be
10 relevant.

11 (e) In response to a motion to determine a person's numeric
12 risk level, the court shall promptly determine the person's risk
13 level under the sex offender screening tool described by Article
14 62.007. In determining the person's risk level, the court may seek
15 the assistance of the council, the department, or any agency of this
16 state or a political subdivision of this state.

17 Art. 62.405 [~~62.406~~]. COSTS OF INDIVIDUAL RISK ASSESSMENT
18 AND OF COURT. A person required to register under this chapter who
19 files a motion for early termination of the person's registration
20 obligation under this chapter is responsible for and shall remit to
21 the council and to the court, as applicable, all costs associated
22 with and incurred by the council in providing the individual risk
23 assessment evaluation described by Article 62.402(b)(1) or
24 associated with and incurred by the court in holding a hearing or
25 performing its other duties under this subchapter.

26 Art. 62.406 [~~62.407~~]. EFFECT OF ORDER GRANTING EARLY
27 TERMINATION. (a) If, after notice to the person and to the

1 prosecuting attorney and a hearing, the court grants a motion filed
2 under Article 62.403 [~~62.404~~] for the early termination of a
3 person's obligation to register under this chapter,
4 notwithstanding Article 62.101, the person's obligation to
5 register under this chapter ends on the later of:

6 (1) the date the court enters the order of early
7 termination; or

8 (2) the date the person has paid each cost described by
9 Article 62.405 [~~Section 62.406~~].

10 (b) If the court grants a motion filed under Article 62.403
11 [~~62.404~~] for the early termination of a person's obligation to
12 register under this chapter, all conditions of the person's parole,
13 release to mandatory supervision, or community supervision shall be
14 modified in accordance with the court's order.

15 Art. 62.407. EFFECT OF DETERMINATION OF NUMERIC RISK LEVEL
16 BY COURT. (a) If, after notice to the person and to the prosecuting
17 attorney and a hearing, the court assigns a numeric risk level of
18 one to a person required to register under this chapter, all
19 information concerning the person shall be removed from the public
20 website maintained under Article 62.0051 on the later of:

21 (1) the date the court assigns the risk level; or

22 (2) the date the person has paid each cost described by
23 Article 62.405.

24 (b) This article does not apply to a person who has
25 committed an offense under Article 62.102.

26 Art. 62.408. APPLICABILITY [~~NONAPPLICABILITY~~]. (a) This
27 subchapter applies only to a person who:

1 (1) is required to register under this chapter as the
2 result of a single reportable conviction or adjudication; and

3 (2) subsequent to being required to register under
4 this chapter has not been:

5 (A) convicted of, or placed on community
6 supervision for, a criminal offense other than a Class C
7 misdemeanor; or

8 (B) adjudicated to have engaged in delinquent
9 conduct that violates, or placed on juvenile probation for, a penal
10 law of the grade of Class B misdemeanor or higher.

11 (b) This subchapter does not apply to a person without a
12 reportable conviction or adjudication who is required to register
13 as a condition of parole, release to mandatory supervision, or
14 community supervision.

15 SECTION 1.005. Chapter 250, Local Government Code, is
16 amended by adding Section 250.007 to read as follows:

17 Sec. 250.007. LIMITATIONS ON RESIDENCE OF REGISTERED SEX
18 OFFENDERS. The governing body of a municipality or the
19 commissioners court of a county may not adopt an ordinance or order
20 that restricts, within that municipality or county, the location of
21 the residence of an individual who is required to register as a sex
22 offender under Chapter 62, Code of Criminal Procedure.

23 ARTICLE 2

24 SECTION 2.001. Article 62.0061(a), Code of Criminal
25 Procedure, is amended to read as follows:

26 (a) On request by a commercial social networking site, the
27 department may provide to the commercial social networking site:

1 (1) all public information that is displayed on
2 [~~contained in~~] the public website [~~database~~] maintained under
3 Article 62.0051 [~~62.005~~]; and

4 (2) notwithstanding Article 62.0051(c)(2)
5 [~~62.005(b)(2)~~], any online identifier established or used by a
6 person who uses the site, is seeking to use the site, or is
7 precluded from using the site.

8 SECTION 2.002. Article 62.051(c), Code of Criminal
9 Procedure, as amended by Chapters 661 (H.B. 2153) and 755 (S.B.
10 689), Acts of the 81st Legislature, Regular Session, 2009, is
11 reenacted and amended to read as follows:

12 (c) The registration form shall require:

13 (1) the person's full name, date of birth, sex, race,
14 height, weight, eye color, hair color, social security number,
15 driver's license number, and shoe size;

16 (1-a) [~~and~~] the address at which the person resides
17 or intends to reside or, if the person does not reside or intend to
18 reside at a physical address, a detailed description of each
19 geographical location at which the person resides or intends to
20 reside;

21 (1-b) [~~and~~] each alias used by the person and any home,
22 work, or cellular telephone number of the person;

23 (2) a recent color photograph or, if possible, an
24 electronic digital image of the person and a complete set of the
25 person's fingerprints;

26 (3) the type of offense the person was convicted of,
27 the age of the victim, the date of conviction, and the punishment

1 received;

2 (4) an indication as to whether the person is
3 discharged, paroled, or released on juvenile probation, community
4 supervision, or mandatory supervision;

5 (5) an indication of each license, as defined by
6 Article 62.005(e) [~~62.005(g)~~], that is held or sought by the
7 person;

8 (6) an indication as to whether the person is or will
9 be employed, carrying on a vocation, or a student at a particular
10 public or private institution of higher education in this state or
11 another state, and the name and address of that institution;

12 (7) the identification of any online identifier
13 established or used by the person; and

14 (8) any other information required by the department.

15 SECTION 2.003. Section 38.022(c), Education Code, is
16 amended to read as follows:

17 (c) A school district may verify whether a visitor to a
18 district campus is a registered sex offender under Chapter 62, Code
19 of Criminal Procedure, [~~registered~~] with the public website
20 [~~computerized central database~~] maintained by the Department of
21 Public Safety under [~~as provided by~~] Article 62.0051 [~~62.005~~], Code
22 of Criminal Procedure, or any other website or database that is
23 accessible by the district.

24 SECTION 2.004. Section 411.088(b), Government Code, is
25 amended to read as follows:

26 (b) The department may not charge for processing an
27 electronic inquiry for information described as public information

1 under Article 62.0051 [~~62.005~~], Code of Criminal Procedure, made
2 through the use of the Internet.

3 ARTICLE 3

4 SECTION 3.001. The changes in law made by this Act in
5 amending Chapter 62, Code of Criminal Procedure, apply to any
6 person who, on or after the effective date of this Act, is required
7 to register under that chapter, regardless of whether the offense
8 or conduct for which the person is required to register occurs
9 before, on, or after the effective date of this Act.

10 SECTION 3.002. Article 42.017 and Section 5(g), Article
11 42.12, Code of Criminal Procedure, as amended by this Act, apply
12 only to a judgment of conviction entered on or after the effective
13 date of this Act or a grant of deferred adjudication made on or
14 after the effective date of this Act.

15 SECTION 3.003. To the extent of any conflict, this Act
16 prevails over another Act of the 82nd Legislature, Regular Session,
17 2011, relating to nonsubstantive additions to and corrections in
18 enacted codes.

19 SECTION 3.004. This Act takes effect September 1, 2011.