86R13142 JSC-D

By:  Dominguez H.B. No. 4038

A BILL TO BE ENTITLED

AN ACT

relating to an affirmative defense to certain prohibited sexual conduct occurring as part of a dating relationship that began in primary or secondary school.

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

SECTION 1.  Sections 21.11(b) and (c), Penal Code, are amended to read as follows:

(b)  It is an affirmative defense to prosecution under this section that the actor:

(1)  was [~~not more than three years older than the victim and~~] of the opposite sex and was, at the time of the offense:

(A)  not more than three years older than the victim; or

(B)  in a dating relationship with the victim that began while both the actor and the victim were enrolled in the same primary or secondary school, if the school provided instruction to not more than four consecutive grade levels at that time;

(2)  did not use duress, force, or a threat against the victim at the time of the offense; and

(3)  at the time of the offense:

(A)  was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B)  was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(c)  In this section:

(1)  "Dating relationship" has the meaning assigned by Section 71.0021, Family Code.

(2)  "Sexual [~~, "sexual~~] contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(A) [~~(1)~~]  any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(B) [~~(2)~~]  any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

SECTION 2.  Section 22.011(c), Penal Code, is amended by adding Subdivision (6) to read as follows:

(6)  "Dating relationship" has the meaning assigned by Section 71.0021, Family Code.

SECTION 3.  Section 22.011, Penal Code, is amended by amending Subsection (e) and adding Subsection (e-1) to read as follows:

(e)  It is an affirmative defense to prosecution under Subsection (a)(2)[~~:~~

[~~(1)~~]  that the actor was the spouse of the child at the time of the offense.

(e-1)  It is an affirmative defense to prosecution under Subsection (a)(2) that, at the time of the offense[~~; or~~

[~~(2)  that~~]:

(1) [~~(A)~~]  the actor was not [~~more than three years older than the victim and at the time of the offense~~]:

(A) [~~(i)  was not~~] required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) [~~(ii)  was not~~] a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section;

(2)  the actor:

(A)  was not more than three years older than the victim; or

(B)  was in a dating relationship with the victim that began while both the actor and the victim were enrolled in the same primary or secondary school, if the school provided instruction to not more than four consecutive grade levels at that time; and

(3) [~~(B)~~]  the victim:

(A) [~~(i)~~]  was a child of 14 years of age or older; and

(B) [~~(ii)~~]  was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

SECTION 4.  The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 5.  This Act takes effect September 1, 2019.