

By: Dominguez

H.B. No. 4038

A BILL TO BE ENTITLED

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

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

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

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

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

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

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

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

20 (3) at the time of the offense:

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

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

1 section.

2 (c) In this section:

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

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

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

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

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

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

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

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

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

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

27 [~~(2) that~~]:

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

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

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

8 (2) the actor:

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

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

16 (3) [~~(B)~~] the victim:

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

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

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

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1 section, an offense was committed before the effective date of this
2 Act if any element of the offense occurred before that date.

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