

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 3148
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of sex offender registration is to protect children from child molesters and otherwise dangerous sex offenders. Registration is not meant to place a person who is not a child molester or sexual predator under extended, sometimes lifetime, registration requirements and supervision. These restrictions are currently imposed on those convicted of offenses commonly referred to as Romeo/Juliet offenses that involve a consensual sexual act between a young adult and an underage participant, even though the act was committed willingly by both participants and did not involve the use of force or a threat. If convicted, that older actor is required to register as a sex offender for the rest of the person's life. The registration requirement impacts where this young person can live, their ability to be in the presence of younger siblings or family members, and future job prospects.

The monitoring and supervision of a person who is not a child molester or sexual predator wastes valuable law enforcement resources and impedes law enforcement efforts to closely monitor dangerous and sometimes violent sex offenders for whom registration was intended.

C.S.H.B. 3148 relates to exempting certain young persons who are convicted of an offense involving consensual sex from the requirement of registering as a sex offender in this state.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Council on Sex Offender Treatment is transferred to the Department of Public Safety of the State of Texas in SECTION 4 (Section 62.402, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 42.017, Code of Criminal Procedure, to require the judge, in the trial of an offense under Section 21.02 (Continuous Sexual Abuse of Young Child or Children), 21.11 (Indecency With a Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), or 43.25 (Sexual Performance by a Child), Penal Code, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case if the judge determines that at the time of the offense, the defendant was not more than four years older than the victim or intended victim and the victim or intended victim was at least 14 years of age, rather than the defendant was younger than 19 years of age and the victim was at least 13 years of age, and 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. Amends Section 5(g), Article 42.12, Code of Criminal Procedure, to make a conforming change.

SECTION 3. Amends Article 62.301, Code of Criminal Procedure, by amending Subsections (a), (c), and (d), and adding Subsection (a-1), as follows:

- (a) Authorizes a person required to register under this chapter, rather than a person required to register under this chapter if eligible under Subsection (b) (relating to eligibility of a person to petition the court) or (c), to petition the court having jurisdiction over the case for an order exempting the person from registration under this chapter at any time on or after the date of the person's sentencing or the date the person is placed on deferred adjudication community supervision, as applicable, if the person is eligible to

petition the court under Subsection (b) or (c), rather than at any time after the person's sentencing or after the person is placed on deferred adjudication community supervision, or at any time on or after the date the person receives a dismissal and discharge under Section 5(c) (relating to the requirement that a judge dismiss the proceedings against a defendant on expiration of a community supervision period imposed on the defendant), Article 42.12, if the person is eligible to petition the court under Subsection (a-1).

(a-1) Provides that a person is eligible to petition the court as described by Subsection (a) if the person is required to register only a result of a single reportable adjudication, other than an adjudication of delinquent conduct, for an offense under Section 21.11 or 22.011, Penal Code, if the charge for the offense is based solely on the ages of the person and the victim or intended victim; was younger than 21 years of age at the time the offense was committed; and before or on the date of the petition, received a dismissal and discharge under Section 5(c), Article 42.12.

(c) Provides that a defendant who before September 1, 2009, rather than 2001, is convicted of or placed on deferred adjudication community supervision for an offense under Section 21.11, 22.011, 22.021, or 43.25, Penal Code, is eligible to petition the court as described by Subsection (a). Makes a conforming change.

(d) Authorizes the court, after a hearing on the petition described by Subsection (a), to issue an order exempting the person from registration under this chapter if it appears by a preponderance of the evidence that the exemption does not threaten public safety, rather than that the exemption does not threaten public safety as presented by a registered sex offender treatment provider; the person's conduct did not occur without the consent of the victim or intended victim as described by Section 22.011(b) (relating to the circumstances classified as an incident of sexual assault), Penal Code; the exemption is in the best interest of the victim or intended victim; and the exemption is in the best interest of justice. Makes nonsubstantive changes.

SECTION 4. Amends Article 62.402, Code of Criminal Procedure, as follows:

Art. 62.402. DETERMINATION OF MINIMUM REQUIRED REGISTRATION PERIOD. (a) Requires the Department of Public Safety of the State of Texas (DPS), rather than the Council on Sex Offender Treatment (council), by rule to determine the minimum required registration period under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Section 16901 et seq.), rather than under 42 U.S.C. Section 14071 (Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program), for each reportable conviction or adjudication under this chapter, if this state is to receive the maximum amount of federal money available to a state as described by that law.

(b) Makes a conforming change.

(c) Requires DPS, to the extent possible, to periodically verify with the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, rather than the Bureau of Justice Assistance, or another appropriate federal agency the accuracy of the list of reportable convictions or adjudications described by Subsection (b). Makes a conforming change.

SECTION 5. Provides that the changes in law made by this Act in amending Chapter 62 (Sex Offender Registration Program), Code of Criminal Procedure, apply to any person who, on or after the effective date of this Act, is required to register under that chapter, regardless of whether the offense or conduct for which the person is required to register occurs before, on, or after the effective date of this Act.

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

SECTION 7. Effective date: September 1, 2009.