

SENATE AMENDMENTS

2nd Printing

By: Smith of Tarrant

H.B. No. 3148

A BILL TO BE ENTITLED

1 AN ACT
2 relating to exempting certain young persons who are convicted of an
3 offense involving consensual sex from the requirement of
4 registering as a sex offender in this state.

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

6 SECTION 1. Article 42.017, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the
9 trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or
10 43.25, Penal Code, the judge shall make an affirmative finding of
11 fact and enter the affirmative finding in the judgment in the case
12 if the judge determines that:

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

17 (2) the conviction is based solely on the ages of the
18 defendant and the victim or intended victim at the time of the
19 offense.

20 SECTION 2. Section 5(g), Article 42.12, Code of Criminal
21 Procedure, is amended to read as follows:

22 (g) If a judge places on community supervision under this
23 section a defendant charged with an offense under Section 21.11,
24 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 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 3. Articles 62.301(a) and (c), Code of Criminal
12 Procedure, are amended to read as follows:

13 (a) If eligible under Subsection (b) or (c), a person
14 required to register under this chapter may petition the court
15 having jurisdiction over the case for an order exempting the person
16 from registration under this chapter at any time on or after the
17 date of the person's sentencing or [~~after~~] the date the person is
18 placed on deferred adjudication community supervision, as
19 applicable.

20 (c) A defendant who before September 1, 2009 [~~2001~~], is
21 convicted of or placed on deferred adjudication community
22 supervision for an offense under Section 21.11, 22.011, 22.021, or
23 43.25, Penal Code, is eligible to petition the court as described by
24 Subsection (a). The court may consider the petition only if the
25 petition states and the court finds that the defendant would have
26 been entitled to the entry of an affirmative finding under Article
27 42.017 or Section 5(g), Article 42.12, as appropriate, had the

1 conviction or placement on deferred adjudication community
2 supervision occurred after September 1, 2009 [~~2001~~].

3 SECTION 4. Article 62.402, Code of Criminal Procedure, is
4 amended to read as follows:

5 Art. 62.402. DETERMINATION OF MINIMUM REQUIRED
6 REGISTRATION PERIOD. (a) The department [~~council~~] by rule shall
7 determine the minimum required registration period under the Adam
8 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Section
9 16901 et seq.) [~~14071 (Jacob Wetterling Crimes Against Children and~~
10 ~~Sexually Violent Offender Registration Program)~~] for each
11 reportable conviction or adjudication under this chapter, if this
12 state is to receive the maximum amount of federal money available to
13 a state as described by that law.

14 (b) After determining the minimum required registration
15 period for each reportable conviction or adjudication under
16 Subsection (a), the department [~~council~~] shall compile and publish
17 a list of reportable convictions or adjudications for which a
18 person must register under this chapter for a period that exceeds
19 the minimum required registration period under federal law.

20 (c) To the extent possible, the department [~~council~~] shall
21 periodically verify with the Office of Sex Offender Sentencing,
22 Monitoring, Apprehending, Registering, and Tracking [~~Bureau of~~
23 ~~Justice Assistance~~] or another appropriate federal agency the
24 accuracy of the list of reportable convictions or adjudications
25 described by Subsection (b).

26 SECTION 5. The changes in law made by this Act in amending
27 Chapter 62, Code of Criminal Procedure, apply to any person who, on

1 or after the effective date of this Act, is required to register
2 under that chapter, regardless of whether the offense or conduct
3 for which the person is required to register occurs before, on, or
4 after the effective date of this Act.

5 SECTION 6. This Act takes effect September 1, 2009.

ADOPTED

MAY 22 2009

Atay Law
Secretary of the Senate

Roger W. ...

By: _____

H.B. No. 3148

Substitute the following for H.B. No. 3148:

By: _____

C.S. H.B. No. 3148

A BILL TO BE ENTITLED

1 AN ACT
2 relating to exempting certain young persons who are convicted of an
3 offense involving consensual sex from the requirement of
4 registering as a sex offender in this state.

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

6 SECTION 1. Article 42.017, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. In the
9 trial of an offense under Section 21.02, 21.11, 22.011, 22.021, or
10 43.25, Penal Code, the judge shall make an affirmative finding of
11 fact and enter the affirmative finding in the judgment in the case
12 if the judge determines that:

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

17 (2) the conviction is based solely on the ages of the
18 defendant and the victim or intended victim at the time of the
19 offense.

20 SECTION 2. Section 5(g), Article 42.12, Code of Criminal
21 Procedure, is amended to read as follows:

22 (g) If a judge places on community supervision under this
23 section a defendant charged with an offense under Section 21.11,
24 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 3. Article 62.301, Code of Criminal Procedure, is
12 amended by amending Subsections (a), (c), and (d) and adding
13 Subsection (a-1) to read as follows:

14 (a) A ~~[If eligible under Subsection (b) or (c), a]~~ person
15 required to register under this chapter may petition the court
16 having jurisdiction over the case for an order exempting the person
17 from registration under this chapter:

18 (1) at any time on or after the date of the person's
19 sentencing or ~~[after]~~ the date the person is placed on deferred
20 adjudication community supervision, as applicable, if the person is
21 eligible to petition the court under Subsection (b) or (c); or

22 (2) at any time on or after the date the person
23 receives a dismissal and discharge under Section 5(c), Article
24 42.12, if the person is eligible to petition the court under
25 Subsection (a-1).

26 (a-1) A person is eligible to petition the court as
27 described by Subsection (a) if the person:

1 (1) is required to register only a result of a single
2 reportable adjudication, other than an adjudication of delinquent
3 conduct, for an offense under Section 21.11 or 22.011, Penal Code,
4 if the charge for the offense is based solely on the ages of the
5 person and the victim or intended victim;

6 (2) was younger than 21 years of age at the time the
7 offense was committed; and

8 (3) before or on the date of the petition, received a
9 dismissal and discharge under Section 5(c), Article 42.12.

10 (c) A defendant who before September 1, 2009 [~~2001~~], is
11 convicted of or placed on deferred adjudication community
12 supervision for an offense under Section 21.11, 22.011, 22.021, or
13 43.25, Penal Code, is eligible to petition the court as described by
14 Subsection (a). The court may consider the petition only if the
15 petition states and the court finds that the defendant would have
16 been entitled to the entry of an affirmative finding under Article
17 42.017 or Section 5(g), Article 42.12, as appropriate, had the
18 conviction or placement on deferred adjudication community
19 supervision occurred after September 1, 2009 [~~2001~~].

20 (d) After a hearing on the petition described by Subsection
21 (a), the court may issue an order exempting the person from
22 registration under this chapter if it appears by a preponderance of
23 the evidence that:

24 (1) [~~as presented by a registered sex offender~~
25 ~~treatment provider, that~~] the exemption does not threaten public
26 safety; [~~and~~]

27 (2) [~~that~~] the person's conduct did not occur without

1 the consent of the victim or intended victim as described by Section
2 22.011(b), Penal Code;

3 (3) the exemption is in the best interest of the victim
4 or intended victim; and

5 (4) the exemption is in the best interest of justice.

6 SECTION 4. Article 62.402, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 62.402. DETERMINATION OF MINIMUM REQUIRED
9 REGISTRATION PERIOD. (a) The department [~~council~~] by rule shall
10 determine the minimum required registration period under the Adam
11 Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Section
12 16901 et seq.) [~~14071 (Jacob Wetterling Crimes Against Children and~~
13 ~~Sexually Violent Offender Registration Program)] for each
14 reportable conviction or adjudication under this chapter, if this
15 state is to receive the maximum amount of federal money available to
16 a state as described by that law.~~

17 (b) After determining the minimum required registration
18 period for each reportable conviction or adjudication under
19 Subsection (a), the department [~~council~~] shall compile and publish
20 a list of reportable convictions or adjudications for which a
21 person must register under this chapter for a period that exceeds
22 the minimum required registration period under federal law.

23 (c) To the extent possible, the department [~~council~~] shall
24 periodically verify with the Office of Sex Offender Sentencing,
25 Monitoring, Apprehending, Registering, and Tracking [~~Bureau of~~
26 ~~Justice Assistance~~] or another appropriate federal agency the
27 accuracy of the list of reportable convictions or adjudications

1 described by Subsection (b).

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

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

13 SECTION 7. This Act takes effect September 1, 2009.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 23, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3148 by Smith, Todd (Relating 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.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to exempt certain individuals from the duty to register as a sex offender if certain age requirements are met, and also provides certain conditions under which a person may petition the court for an order exempting the person from registration. Provisions related to reportable convictions or adjudications related to sex offender registration programs would also be affected by the bill. The bill would require the Department of Public Safety to determine by rule the minimum required registration period under the Adam Walsh Child Protection and Safety Act of 2006 for each reportable conviction or adjudication under the Texas sex offender registration program. This analysis assumes that implementing the provisions of the bill would not pose a significant fiscal or operational impact to the State.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, SD, ESi, GG, MWU

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3148 by Smith, Todd (Relating 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.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to exempt certain individuals from the duty to register as a sex offender if certain age requirements are met, and also provides certain conditions under which a person may petition the court for an order exempting the person from registration. Provisions related to reportable convictions or adjudications related to sex offender registration programs would also be affected by the bill. The bill would require the Department of Public Safety to determine by rule the minimum required registration period under the Adam Walsh Child Protection and Safety Act of 2006 for each reportable conviction or adjudication under the Texas sex offender registration program. This analysis assumes that implementing the provisions of the bill would not pose a significant fiscal or operational impact to the State.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, ESi, GG, MWU

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 18, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3148 by Smith, Todd (Relating 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.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to exempt certain individuals from the duty to register as a sex offender if certain age requirements are met. Provisions related to reportable convictions or adjudications related to sex offender registration programs would also be affected by the bill. The bill would establish a procedure whereby a person who is placed on deferred adjudication or convicted of certain sexual offenses may petition the court for an exemption from the requirement to register as a sex offender. The bill would require the Department of Public Safety to determine by rule the minimum required registration period under the Adam Walsh Child Protection and Safety Act of 2006 for each reportable conviction or adjudication under the Texas sex offender registration program. This analysis assumes that implementing the provisions of the bill would not pose a significant fiscal or operational impact to the State.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JOB, ESi, GG, MWU

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 15, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3148 by Smith, Todd (Relating to exempting certain persons from the duty to register as a sex offender in this state.), **As Introduced**

No significant fiscal implication to the State is anticipated.

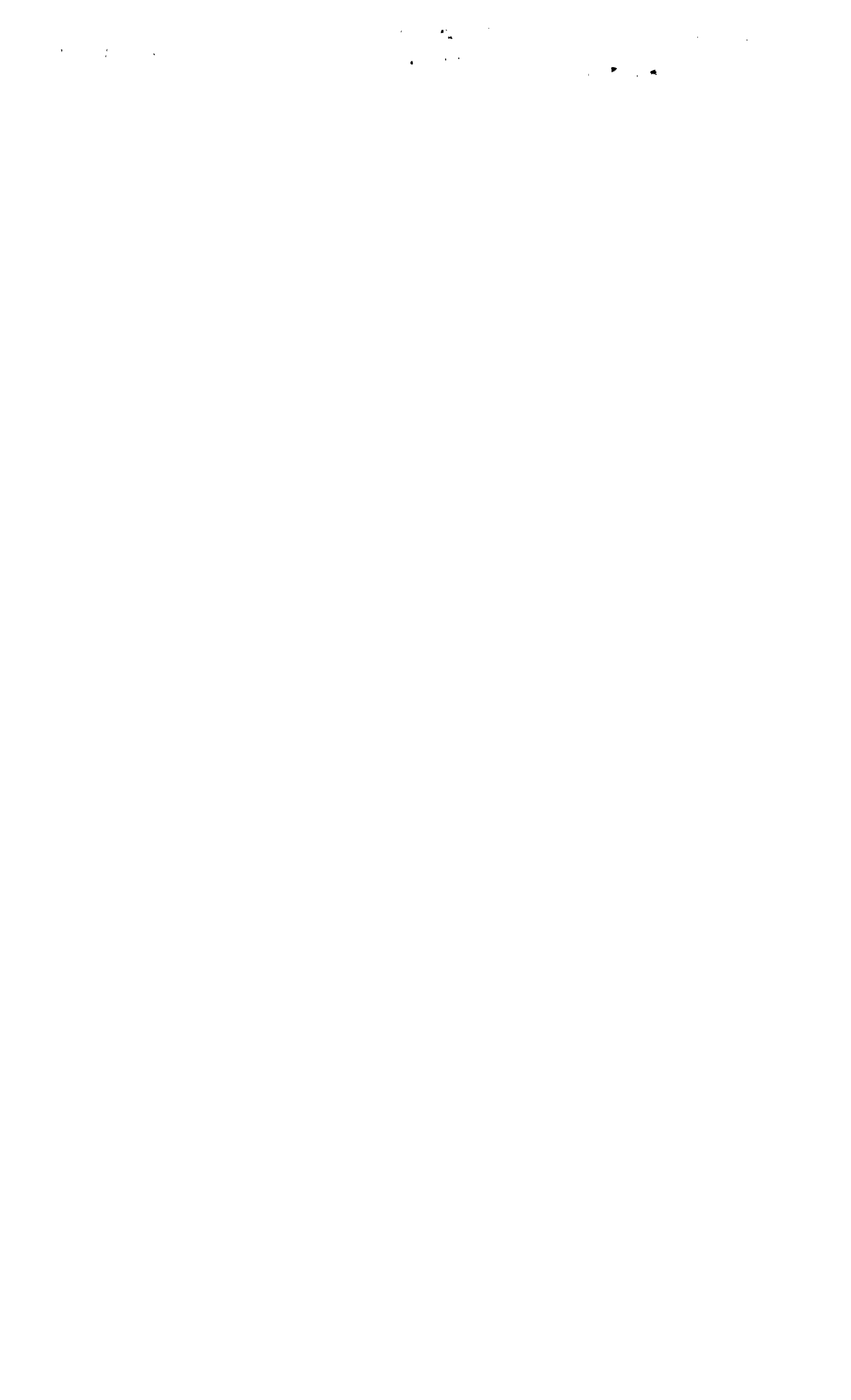
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Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 537 State Health Services, Department of

LBB Staff: JOB, ESi, MWU



LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3148 by Smith, Todd (Relating 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.), **Committee Report 2nd House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, TMP

LEGISLATIVE BUDGET BOARD

Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 15, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3148 by Smith, Todd (Relating 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.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, LM

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

April 15, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3148 by Smith, Todd (Relating to exempting certain persons from the duty to register as a sex offender in this state.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, LM

