

House Bill 3148
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. 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 21.02, 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 **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 2. 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 affirmative finding of fact and file a statement of that affirmative finding with the papers 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 **13** years of age; and

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SECTION 1. 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 21.02, 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 2. 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 affirmative finding of fact and file a statement of that affirmative finding with the papers 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

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

SECTION 3. Articles 62.301(a) and (c), Code of Criminal Procedure, are amended to read as follows:

(a) **If eligible under Subsection (b) or (c), a** person required to register under this chapter may 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 ~~[after]~~ the date the person is placed on deferred adjudication community supervision, as applicable.

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

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

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

(1) at any time on or after the date of the person's sentencing or [after] 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); or

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

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

(1) 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

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(c) A defendant who before September 1, 2009 [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). The court may consider the petition only if the petition states and the court finds that the defendant would have been entitled to the entry of an affirmative finding under Article 42.017 or Section 5(g), Article 42.12, as appropriate, had the conviction or placement on deferred adjudication community supervision occurred after September 1, 2009 [2001].

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intended victim;
(2) was younger than 21 years of age at the time the offense was committed; and
(3) before or on the date of the petition, received a dismissal and discharge under Section 5(c), Article 42.12.
(c) A defendant who before September 1, 2009 [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). The court may consider the petition only if the petition states and the court finds that the defendant would have been entitled to the entry of an affirmative finding under Article 42.017 or Section 5(g), Article 42.12, as appropriate, had the conviction or placement on deferred adjudication community supervision occurred after September 1, 2009 [2001].
(d) After a hearing on the petition described by Subsection (a), the court may issue an order exempting the person from registration under this chapter if it appears by a preponderance of the evidence that:
(1) [as presented by a registered sex offender treatment provider, that] the exemption does not threaten public safety; [and]
(2) [that] the person's conduct did not occur without the consent of the victim or intended victim as described by Section 22.011(b), Penal Code;
(3) the exemption is in the best interest of the victim or

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intended victim; and
(4) the exemption is in the best interest of justice.

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

Art. 62.402. DETERMINATION OF MINIMUM REQUIRED REGISTRATION PERIOD. (a) The department [council] by rule shall 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.) [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) After determining the minimum required registration period for each reportable conviction or adjudication under Subsection (a), the department [council] shall compile and publish a list of reportable convictions or adjudications for which a person must register under this chapter for a period that exceeds the minimum required registration period under federal law.

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

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reportable convictions or adjudications described by Subsection (b).

SECTION 5. The changes in law made by this Act in amending Chapter 62, 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.

No equivalent provision.

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

Same as House version.

SECTION 6. 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. Same as House version.