

By: Smith of Tarrant

H.B. No. 227

Substitute the following for H.B. No. 227:

By: Gallego

C.S.H.B. No. 227

A BILL TO BE ENTITLED

1 AN ACT

2 relating to exempting persons who are convicted of certain sexual  
3 offenses from registering as a sex offender in this state.

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

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

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

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

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

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

21 (g) If a judge places on community supervision under this  
22 section a defendant charged with an offense under Section 21.11  
23 or [+] 22.011, ~~[22.021, or 43.25]~~ Penal Code, the judge shall make  
24 an affirmative finding of fact and file a statement of that

1 affirmative finding with the papers in the case if the judge  
2 determines that:

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

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

10 SECTION 3. Article 62.301, Code of Criminal Procedure, is  
11 amended by amending Subsections (a), (c), and (d) and adding  
12 Subsection (c-1) 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, 2011 ~~[2001]~~, is  
21 convicted of or placed on deferred adjudication community  
22 supervision for an offense under Section 21.11 or ~~[or]~~ 22.011,  
23 ~~[22.021, or 43.25]~~ Penal Code, is eligible to petition the court as  
24 described by Subsection (a). The court may consider the petition  
25 only if the petition states and the court finds that the defendant  
26 would have been entitled to the entry of an affirmative finding  
27 under Article 42.017 or Section 5(g), Article 42.12, as

1 appropriate, had the conviction or placement on deferred  
2 adjudication community supervision occurred after September 1,  
3 2011 [2001].

4                   (c-1) At a hearing on the petition described by Subsection  
5 (a), the court may consider:

6                   (1) testimony from the victim or intended victim, or a  
7 member of the victim's or intended victim's family, concerning the  
8 requested exemption;

9                   (2) the relationship between the victim or intended  
10 victim and the petitioner at the time of the hearing; and

11                   (3) any other evidence that the court determines is  
12 relevant and admissible.

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

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

20                   (2) ~~[that]~~ the person's conduct did not occur without  
21 the consent of the victim or intended victim as described by Section  
22 22.011(b), Penal Code;

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

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

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

1                   Art. 62.402. DETERMINATION           OF           MINIMUM           REQUIRED  
2 REGISTRATION PERIOD. (a) The department [~~council~~] by rule shall  
3 determine the minimum required registration period under federal  
4 law [~~42 U.S.C. Section 14071 (Jacob Wetterling Crimes Against~~  
5 ~~Children and Sexually Violent Offender Registration Program)~~] for  
6 each reportable conviction or adjudication under this chapter [~~- if~~  
7 ~~this state is to receive the maximum amount of federal money~~  
8 ~~available to a state as described by that law~~].

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

15                   (c) To the extent possible, the department [~~council~~] shall  
16 periodically verify with the United States Department of Justice's  
17 Office of Sex Offender Sentencing, Monitoring, Apprehending,  
18 Registering, and Tracking [~~Bureau of Justice Assistance~~] or another  
19 appropriate federal agency or office the accuracy of the list of  
20 reportable convictions or adjudications described by Subsection  
21 (b).

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

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

6 SECTION 7. This Act takes effect September 1, 2011.