

- SUBJECT:** Exempting certain persons from sex offender registration
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Gallego, Christian, Kent, Miklos, Moody, Pierson, Vaught, Vo
0 nays
3 absent — Fletcher, Hodge, Riddle
- WITNESSES:** For — Herman Buhrig; Mary Sue Molnar; (*Registered, but did not testify:*
Arthur Benner; Tiffany Benner; Kristin Etter, Texas Criminal Defense
Lawyers Association; Joshua Karney; David Kugle; Josephine A. Kugle;
Charlotte Lewis; Carlos Robles; Deborah Scott; Kathy Smith; Dorothy
Stateler; Peggy Tipton; Susan Woodham)
- Against — None
- On — Scott Merchant, Texas Department of Public Safety
- BACKGROUND:** Under Code of Criminal Procedure, ch. 42, in a trial for continuous sexual
abuse of a young child or children, indecency with a child, sexual assault,
or aggravated sexual assault, or if a judge places on community
supervision a defendant charged with certain of those offenses, the judge
must make an affirmative finding of fact that:
- at the time of the offense, 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.
- Under Code of Criminal Procedure, art. 62.301, if a young person is
required to register as sex offender only as a result of a single reportable
conviction or adjudication, other than an adjudication of delinquent
conduct, and the court made the appropriate finding under Code of
Criminal Procedure, ch. 42, the young person may petition the court with
jurisdiction over the case for an order exempting him from registration any
time after his sentencing or placement on deferred adjudication
community supervision.

Under Code of Criminal Procedure, art. 62.402 the Council on Sex Offender Treatment must determine the minimum required registration period for each reportable conviction or adjudication under the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. sec. 14071, in order to receive the maximum amount of federal money available to a state under that law. To the extent possible, the council periodically verifies with the Bureau of Justice Assistance or other appropriate federal agency the accuracy of the list of reportable convictions or adjudications.

DIGEST:

HB 3148 would amend Code of Criminal Procedure, ch. 42 to require that in a trial for continuous sexual abuse of a young child or children, indecency with a child, sexual assault, or aggravated sexual assault, or if a judge placed on community supervision a defendant charged with certain of those offenses, the judge would make an affirmative finding of fact if the judge determined 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 13 years of age; and
- the conviction were based solely on the ages of defendant and victim or intended victim at the time of the offense.

The bill would allow a person to petition the court with jurisdiction over the case for an order to be exempted from registration any time on or after the date of sentencing or the date of placement on deferred adjudication community supervision, as applicable.

The Department of Public Safety would determine the minimum required registration period for each reportable conviction or adjudication under the Adam Walsh Child Protection and Safety Act of 2006, 42 U.S.C. sec. 16901 et seq., and to the extent possible, would verify periodically with the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking, or other appropriate federal agency, the accuracy of the list of reportable convictions or adjudications.

HB 3148 would take effect September 1, 2009, and would apply to any person required to register on or after that date, regardless of whether the offense requiring registration occurred before, on, or after that date.

**SUPPORTERS
SAY:**

By allowing certain young offenders to petition for exemption from the sex offender registration requirement, HB 3148 would allow law enforcement to focus their resources on monitoring sex offenders who were dangerous to children. Rather than the current law, which sets a specific age of under 19 for the offender and at least 13 for the victim at the time of the offense, the bill would qualify a person to petition to be released from sex offender registration if the offender was four years older than the victim or intended victim. If the age of the victim was under 18, then the age of the offender could be under 22. If the victim was age 13, then the offender could have been not more than 17 at the time of the offense to qualify.

The purpose of the sex offender registration is to protect children from sexual predators. Monitoring individuals who committed an age-specific offense and who pose no risk to children is a waste of law enforcement resources and detracts from the close scrutiny of sex offenders who do pose such a risk.

**OPPONENTS
SAY:**

No apparent opposition.