

SUBJECT: Allowing exemptions from sex offender registration for some defendants

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 6 ayes — B. Turner, Keel, Berman, Gutierrez, Hupp, P. King

0 nays

3 absent — Driver, Isett, Villarreal

WITNESSES: For — David Montague, Tarrant County District Attorney's Office

Against — None

BACKGROUND: Texas' sex offender registration and notification law requires certain sex offenders to register with local law enforcement authorities and requires public notification about their whereabouts.

Under Penal Code, sec. 22.011(e) it is a defense to prosecution for sexual assault involving a minor if the defendant was not more than three years older than the victim and at the time of the offense, the defendant was not required to register for life as a sex offender or did not have a reportable conviction or adjudication for sexual assault, and the victim was a child at least 14 years old.

DIGEST: CSHB 2987 would allow judges to exempt from sex offender registration requirements certain adults and juveniles if a judge made certain affirmative findings regarding the circumstances of the offense.

In trials for indecency with a child, sexual assault, aggravated sexual assault, and sexual performance by a child, judges would be required to make an affirmative finding if they found that, at the time of the offense, the defendant was younger than 19-years old and the victim was at least 13-years old, and the conviction was based solely on the ages of the defendant and victim. The finding would have to be made part of the court's judgment in the case.

The same type of finding would have to be made if the same circumstances existed in cases in which judges placed persons on community supervision (probation) for these offenses. In juvenile cases, judges would have to make similar findings and enter them in their disposition orders.

If changes proposed in HB 1118 by Goodman, et al., that would add sec. 62.13 to the Code of Criminal Procedure establishing a procedure for a hearing to determine whether a juvenile has to register as a sex offender did not take effect on or before September 1, 2001, the following provisions in CSHB 2987 would take effect:

CSHB 2987 would allow some adults and juveniles to petition the court for exemption from sex offender registration requirements at any time after sentencing or a juvenile disposition hearing or after being placed on deferred adjudication community supervision. Persons would be eligible for the exemption if they were required to register only because of one conviction or adjudication and the court had made a finding described by the bill.

Persons convicted or placed on deferred adjudication community supervision and juveniles adjudicated before September 1, 2001, for indecency with a child, sexual assault, aggravated sexual assault, or sexual performance by a child would be eligible to petition the court for an exemption to registration requirements. Courts could consider the request only if the person would have been entitled to an affirmative finding described by CSHB 2987 if the person had been convicted after September 1, 2001.

Courts could exempt persons from the registration requirements if it appeared that, by preponderance of the evidence as presented by a registered sex offender treatment provider, the exemption did not threaten public safety and the defendant's conduct did not occur without the consent of the victim.

Exemptions would not expire but courts would be required to withdraw the exemption if after the exemption was granted, the defendant was convicted of an offense subjecting the defendant to registration.

If changes proposed in HB 1118 that would add sec. 62.13 to the Code of Criminal Procedure took effect on or before September 1, 2001, CSHB 2987

would not include references to juveniles asking courts to be exempt from registration requirements.

CSHB 2987 would take effect September 1, 2001.

**SUPPORTERS
SAY:**

Current laws requiring all sex offenders to register with law enforcement agencies and to have information about their whereabouts made public may be counterproductive and too onerous in some cases. CSHB 2987 would allow courts to decide whether to exempt certain limited types of cases from the registration requirements – those in which young people engage in consensual sex acts.

Currently, an 18 year-old who has sex with another teenager could be convicted of what is often called “statutory rape,” even though the sex was consensual. Sometimes these situations are the result of teen-age boyfriend-girlfriend relationships, and although the sexual activity may be inappropriate, it would not be what most persons consider a sex crime. However, a person convicted of a sex offense in this situation currently is branded as a sex offender and subject to registration requirements that involve public notification of the whereabouts of the offender.

This harsh requirement has resulted in problems with the prosecution of sex offenses. Many cases go to trial because defendants are not willing to agree to plea bargains that will subject them to the registration requirements. In other cases, plea agreements are reached, but only after prosecutors agree to a non-sex offense such as assault, which can result in a misleading criminal record because it does not include a sex offense. In other cases, grand juries have refused to indict persons because the result could subject the defendant to sex offender registration.

CSHB 2987 would allow courts to decide on a case-by-case basis if sex-offender registration was appropriate only in the limited situations defined by the bill. Defendants would have to be younger than 19 years old and victims at least 13 years old, and the conduct would have to have occurred with the consent of the victim. This would allow judges to exempt from registration cases in which registration would be inappropriate and too harsh because the sexual conduct did not reach the level anticipated in the sex offender registration laws, and the public was in no danger from the defendant. Adults

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and juveniles who are dangerous and are convicted of true sex crimes still would be subject to registration.

OPPONENTS SAY: CSHB 2987 could endanger the public by exempting certain sex offenders from registering. Public safety and the integrity of the sex-offender registry depend on establishing a complete list of sex offenders.

NOTES: The committee substitute made numerous changes in the original bill, including adding aggravated sexual assault to the list of offenses in the bill, changing the maximum age of the defendant from 19-years old to 18-years old, adding the requirement that judges consider whether the defendant's conduct occurred without the consent of the victim, and making different parts of the bill effective depending on the enactment of HB 1118.

A portion of HB 1118 by Goodman, et al. would amend the Code of Criminal Procedure to establish guidelines for determining whether or not a juvenile offender could be exempt or deferred from being registered as a sex offender. Upon a juvenile's motion, the juvenile court would have to conduct a hearing without a jury to determine exemption, following disposition of the case. HB 1118 passed the House on April 10, and was scheduled for a hearing in the Senate Jurisprudence Committee April 30.