

SUBJECT: Revising criteria allowing requests for sex offender registry exemptions

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Gallego, Aliseda, Burkett, Y. Davis, Rodriguez, Zedler

1 nay — Carter

2 absent — Hartnett, Christian

WITNESSES: For — (*Registered, but did not testify*: Chris Cunico, Texas Criminal Justice Coalition; David Kugle; Josephine Ann Kugle)

Against — (*Registered, but did not testify*: Cathy Cannon; Gerry Cannon; Charles Hosey; Janice Hosey)

On — Allison Taylor, Council on Sex Offender Treatment

BACKGROUND: Code of Criminal Procedure, art. 62.005 requires the Department of Public Safety (DPS) to maintain a computerized central database containing the information required from registered sex offenders and to make information about those registered available to the public through the agency's website.

Code of Criminal Procedure, art. 62.301 establishes the criteria under which certain offenders who were young when they committed their offense can ask a court to be exempt from registering as a sex offender. This can occur if a person is required to register only as a result of a single conviction or adjudication, other than an adjudication of delinquent conduct, and the court has entered in the judgment an affirmative finding relating to the age of the victim and defendant.

The requirements for this finding are found in Code of Criminal Procedure, art. 42.017. This article requires judges to make an affirmative finding relating to the ages of the victim and the defendant if certain facts are determined in trials for certain sex offenses or if a judge places defendants on community supervision (probation) for the same offenses. The finding of fact must be made if:

- at the time of an 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.

This requirement applies to cases of continuous sexual assault of a child, indecency with a child, sexual assault, aggravated sexual assault, and sexual performance by a child.

DIGEST:

CSHB 227 would revise the criteria allowing certain sex offenders to petition courts for an exemption from registering with law enforcement authorities if their convictions were based solely on the ages of the victim and the defendant and they had only a single offense. Instead of allowing requests for exemptions from defendants who were younger than 19 years old with victims who were at least 13 years old, requests would be allowed by defendants who were not more than four years older than a victim who was at least 15 years old.

CSHB 227 would specify that at a hearing held on a request to be exempt from the registry, courts could consider:

- testimony from the victim or intended victim or a member of his or her family;
- the relationship between the victim or intended victim and the petitioner at the time of the hearing; and
- any other evidence that the court deemed relevant and admissible.

The bill would revise the criteria used by judges to decide whether to grant an exemption from the registry. The current requirement that the exemption would not threaten public safety would remain, but the evidence no longer would have to be presented by a registered sex offender treatment provider. The bill would add the following two criteria: that the exemption was in the best interest of the victim or intended victim, and that it was in the best interest of justice.

CSHB 227 also would eliminate the offenses of continuous sexual abuse of a young child, aggravated sexual assault, and sexual performance by a child as those that allowed a defendant to petition the court to be exempt from the registry.

The bill would transfer certain responsibilities relating to the registry from the Council on Sex Offender Treatment to the Texas Department of Public Safety. The transferred duties would include determining the minimum required registration period under federal law and compiling a registration list.

The bill would take effect September 1, 2011. It would apply to persons required to register as a sex offender on or after the bill's effective date. The bill also would allow persons who before September 1, 2011, were convicted of or placed on deferred adjudication for an offense to be eligible to petition a court for an exemption. Courts would have to consider these requests only if they found that the defendant would have been entitled to a finding under the bill if his or her conviction or deferred adjudication placement occurred after September 1, 2011.

The sections of CSHB 227 that would change what must be included in the court's affirmative findings would apply only to a judgment of conviction entered on or after the effective date or a grant of deferred adjudication made on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 227 is needed to allow certain nondangerous persons convicted of crimes for their involvement in consensual sexual relationships as older teens or young adults to ask a judge to spare them from the severe consequences of having to register as sex offenders. It is unfair to treat a participant in these situations – sometimes called Romeo-Juliet affairs – in the same way that dangerous sexual predators are treated with regard to the sex offender registry. While current law allows some persons to ask for an exemption from the registry, the exemption is limited to cases of consensual relationships in which the defendant was younger than 19 years old and the victim was at least 13 years old.

The consequences of remaining on the sex offender registry can ruin lives. Some registrants cannot live with their families because they are prohibited from being around anyone under 18 years old, including their siblings. Registrants who are restricted from residing near schools and parks can find it hard to find housing. Some may not use or subscribe to Internet services. Registrants can have major difficulties finding and keeping jobs. In some cases, registrants are married to the consensual partner but still have to register for life and may face problems if the couple has children.

Current law also has negative consequences for public safety. Registering and monitoring persons who have had consensual teenage relationships and who pose no risk to others is a waste of law enforcement resources and detracts from monitoring sex offenders who are dangerous. CSHB 227 would allow law enforcement to focus its resources on monitoring those dangerous sex offenders. The public would be better able to use the database to protect itself if the database were more narrowly focused on dangerous offenders and did not include youths described by CSHB 227 who had consensual sex.

CSHB 227 would help solve these problems by carefully crafting criteria to allow only persons who had consensual sex as older teenagers or young adults to ask a judge for an exemption from registration if other conditions were met. The bill would apply only if a victim was at least 15 years old and the registrant no more than four years older, which would mean that defendants could be 19 or 20 years old. This would shift the group of offenders eligible to ask for a registration exemption to these older teens and young adults who sometimes are involved in Romeo-Juliet affairs. This would allow exemption requests from a more appropriate group of offenders than under current law.

Judicial discretion and statutory criteria would ensure that exemptions would be granted only in appropriate circumstances. Judges would continue to have full discretion in granting these requests so that any offender who was dangerous could remain on the registry. Current criteria requiring exemptions to be made only if they did not threaten public safety would remain, and the bill would add requirements that any exemption be in the best interest of the victim and justice. The bill also would allow judges to consider testimony from victims and their families and the current relationship between the victim and the defendant.

CSHB 227 also would restrict requests for exemptions to more appropriate offenses by removing some serious sex offenses from the list of those that are eligible for requests for de-registration. Continuous sexual abuse of a young child, aggravated sexual assault, and sexual performance by a child are such serious offenses that offenders who commit them should be not be able to ask for a registry exemption.

CSHB 227 would not change current laws dealing with the punishment of sex offenses. Anyone convicted of an offense described by the bill could still be prosecuted and punished.

Other changes in the bill would move some of the administrative duties involving the registry from the Council on Sex Offender Treatment to DPS, which handles other duties involved with the registry.

OPPONENTS
SAY:

The goal of the sex offender database is to give all Texans a broad-based tool to protect themselves from sex offenders. CSHB 227 could lead to the scaling back of access to potentially important information. Some offenders who may become exempt from registering under CSHB 227 could be dangerous.

In many cases involving the type of teenage or young adult consensual relationships described by CSHB 227, prosecutors do not pursue convictions. Cases that are prosecuted are more likely to be those for which offenders merit inclusion on the sex offender registry. The consequences for inappropriate and illegal cases involving sex between teenagers and older teens or young adult offenders should not be relaxed.

NOTES:

The committee substitute made several changes to the original bill, including raising the age of the victim from 14 years old to 15 years old and adding the provisions detailing what courts could consider in a hearing on a request to be exempt from the registry.

The companion bill, SB 198 by West, passed the Senate by 28 to 2 (Harris, Patrick) on April 14 and was referred to the House Criminal Jurisprudence Committee on April 26.

In 2009, the 81st Legislature enacted HB 3148 by T. Smith, which would have revised the criteria for petitioning courts for an exemption from the sex offender registry, but the bill was vetoed by the governor. HB 3148 would have allowed petitions from defendants who were not more than four years older than a victim who was at least 14 years old.