

## **BILL ANALYSIS**

Senate Research Center  
77R10538 KEL-D

H.B. 2987  
By: Deshotel (Van de Putte)  
Criminal Justice  
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Engrossed

### **DIGEST AND PURPOSE**

The sex offender registration program has been expanded over the past few sessions of the Texas legislature, with additional offenses added to the list of offenses that require registration. Until the last legislative session, judges could exempt a defendant from registration after a hearing was held on the need for registration. In the last session, the legislature removed the discretionary power of judges and made all sex offender registration mandatory. This approach requires all defendants to register and comply with the public notice requirements, even youthful adult offenders that participated in consensual sex that would not be an offense except for the age of the participants. Under current Texas law, if a person has sex with a person younger than 17 years of age that person has committed an offense that requires registration if convicted. Cases like this may meet the requirements for an offense that would require registration, but it has been argued that persons involved in consensual sex are not offenders who should require registration as sex offenders. H.B. 2987 returns discretionary power to judges in such cases.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 42.01, Code of Criminal Procedure, by adding Section 8 to provide that in addition to the information described by Section 1, the judgment should reflect affirmative findings entered pursuant to Article 42.017.

SECTION 2. Amends Chapter 42, Code of Criminal Procedure, by adding Article 42.017, as follows:

Art. 42.017. FINDING REGARDING AGE-BASED OFFENSE. Requires the judge, in the trial of an offense under Section 21.11, 22.011, 22.021, or 43.25, Penal Code, to make an affirmative finding of fact and enter the affirmative finding in the judgment in the case under certain circumstances.

SECTION 3. Amends Section 5, Article 42.12, Code of Criminal Procedure, by adding Subsection (g) to require a judge, if the 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, to make an affirmative finding of fact and file a statement of that affirmative finding with the papers in the case if the judge makes certain determinations.

SECTION 4. Amends Chapter 62, Code of Criminal Procedure, by adding Article 62.0105, as follows:

Art. 62.0105. EXEMPTION FROM REGISTRATION FOR CERTAIN SEX OFFENDERS. (a) Authorizes a person required to register under this chapter, if eligible

under Subsection (b) or (c), to petition the court having jurisdiction over the case for an order exempting the person from registration under this chapter at any time after the person's sentencing or disposition hearing or after the person is placed on deferred adjudication community supervision.

(b) Provides that a person is eligible to petition the court as described by Subsection (a) under certain circumstances.

(c) Provides that a defendant who before September 1, 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, or a child who before that date is adjudicated delinquent for conduct constituting an offense under one of those sections, is eligible to petition the court as described by Subsection (a). Authorizes the court to consider the petition only if the petition states and the court finds that the defendant or child, as appropriate, would have been entitled to the entry of an affirmative finding under Article 42.017 or Section 5(g), Article 42.12, or under Section 54.04(t), Family Code, as appropriate, had the conviction or adjudication occurred after September 1, 2001.

(d) Authorizes the court, after a hearing on the petition described by Subsection (a), to issue an order exempting the person from registration under this chapter under certain circumstances.

(e) Provides that an order exempting the person from registration under this chapter does not expire, but the court is required to withdraw the order if after the order is issued the person receives a reportable conviction or adjudication under this chapter.

SECTION 5. Amends Section 54.04, Family Code, by adding Subsection (t) to require a judge, if the judge orders a disposition under this section, to enter in the order any affirmative finding that at the time of the conduct, the child was younger than 19 years of age and the victim or intended victim was at least 13 years of age, and the adjudication is based solely on the ages of the child and the victim or intended victim at the time of the conduct.

SECTION 6. Amends Chapter 62, Code of Criminal Procedure, by adding Article 62.0105, as follows:

Art. 62.0105. EXEMPTION FROM REGISTRATION FOR CERTAIN SEX OFFENDERS. (a) Authorizes a person required to register under this chapter, if eligible under Subsection (b) or (c), to petition the court having jurisdiction over the case for an order exempting the person from registration under this chapter at any time after the person's sentencing or after the person is placed on deferred adjudication community supervision.

(b) Provides that a person is eligible to petition the court as described by Subsection (a) under certain circumstances.

(c) Provides that a defendant who before September 1, 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). Authorizes the court to 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, 2001.

(d) Authorizes the court, after a hearing on the petition described by Subsection (a), to

issue an order exempting the person from registration under this chapter if it appears by a preponderance of the evidence: as presented by a registered sex offender treatment provider, that the exemption does not threaten public safety; and 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.

(e) Provides that an order exempting the person from registration under this chapter does not expire, but the court is required to withdraw the order if after the order is issued the person receives a reportable conviction or adjudication under this chapter.

SECTION 7. Provides that the change in law made by this Act applies to any person for whom a duty to register as a sex offender has not expired before the effective date of this Act.

SECTION 8. Effective date: September 1, 2001, except as provided by Subsections (b) and (c) of this section:

(b) Provides that Sections 4 and 5 of this Act take effect September 1, 2001, but only if the change in law proposed by H.B. No. 1118, 77th Legislature, Regular Session, 2001, adding Article 62.13 to the Code of Criminal Procedure, does not take effect on or before that date. If H.B. No. 1118 does take effect on or before September 1, 2001, Sections 4 and 5 have no effect.

(c) Provides that Section 6 of this Act takes effect September 1, 2001, but only if the change in law proposed by H.B. No. 1118, 77th Legislature, Regular Session, 2001, adding Article 62.13 to the Code of Criminal Procedure, takes effect on or before that date. If H.B. No. 1118 does not take effect on or before September 1, 2001, Section 6 has no effect.