

# Revising criteria allowing requests for exemptions from sex offender registration

HB 3148 by T. Smith (West)

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**DIGEST:** HB 3148 would have revised the criteria that allow certain young sex offenders to petition courts for an exemption from registering with law enforcement authorities as sex offenders if their convictions were based solely on the ages of the defendant and victim and they had only a single offense. Instead of allowing defendants who were younger than 19 years old with victims who were at least 13 years old to petition for a registration exemption, 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. The bill also would have allowed registration exemption requests from persons who were younger than 21 at the time of their offense and had criminal charges for indecency with a child or sexual assault dismissed or discharged after a term of deferred adjudication probation, if there were only a single offense based solely on the ages of the defendant and victim.

## GOVERNOR'S REASON FOR VETO:

“House Bill No. 3148 would amend current Texas law that allows some sex offenders, in very limited circumstances, to petition a court to be exempt from registering as a sex offender. While House Bill No. 3148 was intended to more narrowly define who could seek a court’s exemption from sex offender registration, I believe the bill fails to adequately protect young victims.

“Specifically, the bill would allow an individual who has completed deferred adjudication for the offense of indecency with a child, and who was younger than 21 years old at the time of the offense, to be eligible to petition a court for an exemption from sex offender registration, regardless of the age of the victim.

“While other provisions of the criminal code provide some protections against very young victims being re-victimized in the event that a court were to improvidently exempt their abusers from sex offender registration, I am not willing to take that gamble with the lives of young Texans.”

**RESPONSE:** **Rep. Todd Smith**, the bill’s author said, “Governor Perry has vetoed one of the most morally compelling bills I have ever filed. I filed the bill because of heartbreaking letters I have received from parents and grandparents describing how their son or grandson has been permanently scarred due to a consensual teenage relationship. All the bill did was give a judge discretion to not place a teen on the sex offender registry for having consensual sex with someone who was at least 14 and not more than 4 years younger than the defendant. Governor Perry apparently believes that every teenager that has a consensual relationship with someone more than 3 years, but less than 4 years younger should be labeled for life as a sex offender. The purpose of sex offender registration is to protect children from child molesters. The monitoring and supervision of non-threatening people wastes law enforcement resources and detracts law enforcement from closer scrutiny of the sex offender

for whom registration was intended — those who are dangerous to children. HB 3148 was passed by a vote of 131-12 in the House and passed unanimously in the Senate. Sixteen witnesses testified in committee in favor of the bill and there was no opposition.

“In his veto statement Governor Perry says that ‘sex offenders would be eligible to petition a court for an exemption from sex offender registration, regardless of the age of the victim.’ This is simply not true. The bill expressly states that the victim must be at least 14 years old with the perpetrator less than 4 years older. He said he feared this bill would not protect young victims, but this bill only allows a judge to grant an exemption when it is in the best interest of the victim. Some of these ‘victims’ are now married to the ‘perpetrator.’ This bill doesn’t change the criminality of the offense of statutory rape. It is still a punishable crime. It only gave certain teens in consensual relationships an opportunity to ask a judge for exemption from lifetime registration as a sex offender. Every step was taken to ensure that no dangerous predator would be eligible to petition under this bill. Even if an offender met all the requirements set forth in this bill, (i.e., consensual relationship, victim at least 14, less than 4 year age difference) a judge would still have discretion — if circumstances warranted — to keep them on the list. I believe teens involved in these relationships have committed a sin, but I don’t believe — in most cases — that that sin should put them on a list that will literally ruin the rest of their lives.

“Brandon M.’s case is a perfect example. Brandon was in high school when he met a 14-year-old girl on a church youth trip. He was less than 4 years older than she was. With her parents’ blessing, they began to date, and openly saw each other romantically for almost a year. When it was disclosed that consensual sexual contact had occurred, her parents pressed charges against Brandon and he was convicted of sexual assault (i.e., includes consensual sex with a minor who is more than 3 years younger than the defendant) and placed forever on the sex offender registry in his state. As a result, Brandon was fired from his job. He will be on the registry and publicly branded as a sex offender for the rest of his life. People in Brandon’s situation can’t be anywhere near a school, a church, or a park. These people can’t attend their own child’s elementary school. They can’t hold certain jobs that may place them around children. They have difficulty getting any job. They can’t attend family functions that may be attended by someone under the age of 17. In Brandon’s mother’s words, ‘I break down in tears several times a week. I know there are violent sexual predators that need to be punished, but this seems like punishment far beyond reasonable for what my son did.’

“Governor Perry has made it clear he wishes to protect the youth of Texas. I feel he has missed a golden opportunity to do so. I will continue to fight for this important legislation that, simply put, delivers people who are of no threat to anyone from a living hell.”

**Sen. Royce West**, the bill’s sponsor, said, “I admit to surprise at the governor’s veto of HB 3148 and extend my regrets to its author, Representative Todd Smith. For several years spanning multiple legislative sessions, we have listened to the families of those convicted, heard hours of testimony from witnesses and spoken with persons in law enforcement who agree that Texas’ system of sex offender registration should make a distinction between sexual predators, dangerous pedophiles and violent sexual assaults, and those consensual activities of a sexual nature that took place between young persons within a certain age range that are addressed by what are commonly called ‘Romeo/Juliet laws.’

“HB 3148 and the Senate bill I authored (SB 1709) attempted to do just that. In this instance, I’d like to think that the governor received inaccurate information as to the contents of this legislation, which had the input of victim’s rights groups, prosecutors and state officials who work in this area of law.

“To the point, the governor’s proclamation states, ‘the bill would allow an individual who has completed deferred adjudication for the offense of indecency with a child, and who was younger than 21 years of age at the time of the offense, to be eligible to petition a court for an exemption from sex offender registration regardless of the age of the victim.’ All true, except for the underlined portion.

“HB 3148 would have amended Art. 62.301 Code of Criminal Procedure by increasing the eligible age of the person convicted by two years. It also specifically referenced Section 5 (c), Art. 42.12 of the code that governs age-based offenses. In this section, HB 3148 actually raises the minimum age of the child victim from 13 to 14 years old, which is also the age difference between an aggravated and non-aggravated offense under existing Texas law. In addition, the only offenses for which a defendant could have petitioned to be released from registration requirements were those in which it was determined that no violence was involved, there was consent by the victim and the conviction was based solely on the age of the persons involved.

“HB 3148 would have also brought Texas into compliance with federal law by closing an existing five year age gap (13-18) between victim and defendant to four years.

“As a former prosecutor and current supporter of those who advocate for victims of sexual assault, I do know the serious nature of these offenses. However I also recognize the impact on a young person’s life who must in Texas register as a sex offender for life for a category of offense that does not require registration in many states across the country and allows registration to be terminated in others and under federal law.”

NOTES: The HRO analysis of HB 3148 appeared in Part Two of the May 4 *Daily Floor Report*.