

# NUTS AND BOLTS OF JUVENILE LAW

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## Juvenile Sex Offender Registration

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### Speaker Information

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### Biographical Information

Linda Icenhauer-Ramirez is a solo practitioner in Austin concentrating in criminal and juvenile trial and appellate work. She received her B.A. in Government from the University of Texas in 1975 and her J.D. from the University of Texas Law School in 1978. During the first three years of her career, she worked at Staff Counsel for Inmates in Huntsville and East Texas Legal Services in Austin. In 1981, she was hired to work at the Court of Criminal Appeals in Austin as a research attorney for Judge Michael McCormick. She worked for Judge McCormick for six and a half years and in 1988 left the Court of Criminal Appeals to enter private practice doing criminal defense work.

She has served as chairperson of the Travis County Bar Association Criminal Law Section, director and presiding director of the Austin Criminal Defense Lawyers Association and she has served on the board of directors of the Texas Criminal Defense Lawyers Association.

In 2002, she received the Litigation Award from the Travis County Women's Lawyer's Association and in 2003, she was named a Super Lawyer by Texas Monthly magazine.



## I. SEX OFFENDER REGISTRATION IN GENERAL

### A. Every Jurisdiction Has Sex Offender Registration Laws

All fifty state legislatures and the Congress of the United States have adopted sex offender registration law in some form or fashion. The statutes requiring juvenile sexual registration all differ as to the requirement of public registration, community notification, assessment of risk levels, and duration of the registration. John Zepeda, "Juvenile Sex Offender Un-Registration: An Analysis of the Application of Article 62.13(a)-(k) and the Evolution Towards Discretion in Juvenile Sex Offender Registration", State Bar Section Report Juvenile Law, Vol. 16, No. 3 (Sept. 2002).

### B. Sex Offender Registration Has Been Deemed to Be Constitutional

1. The Texas juvenile sex offender registration statute does not violate due process standards. In re R.M., 2001 Tex.App.LEXIS 497 (Tex.App.-San Antonio, 9/26/01); In re M.A.H., 20 S.W.3d 860 (Ft. Worth 2000)
2. The Texas sex offender registration statute does not violate the double jeopardy provisions of the U.S. Constitution. Alexander v. State, 2004 Tex.App. LEXIS 5222 (Tex.App.-Dallas 2004); Hooks v. State, 144 S.W.3d 652 (Tex.App.-Beaumont 2004)
3. The Texas sex offender registration statute does not violate the prohibition on ex post facto laws. Coronado v. State, 148 S.W.3d 607 (Tex.App.-Houston [14<sup>th</sup>] 2004); Lantz v. State, 2003 Tex.App. LEXIS 4722 (Tex.App.-Houston [14<sup>th</sup>] 2003); Dean v. State, 60 S.W.3d 217 (Tex.App.-Houston [14<sup>th</sup>] 2001)
4. The Texas sex offender registration statute does not violate the equal protection provision of the U.S. Constitution. Mungia v. State, 2002 Tex.App. LEXIS 4395 (Tex.App.-Corpus Christi 2002)
5. The Texas juvenile sex offender registration requirements do not constitute cruel and unusual punishment. In re D.L., 160 S.W.3d 155 (Tex.App.-Tyler, 2005)

### C. Continued Evolution of the Law

Each legislative session has seen revisions of the Texas sex offender registration law. In recent years it was determined that the Texas sex offender registration statute had become too cumbersome and difficult to manage. As a result an interim study examined Chapter 62 of the Code of Criminal Procedure and determined what changes needed to be made to streamline and simplify the chapter. The resulting bill, House Bill 867, was passed this spring and takes effect September 1, 2005.

The new Chapter 62 is reorganized and is supposed to be more user-friendly. In addition several substantive changes were made. These include making the newspaper notice requirement optional and allowing registrants who do not have a permanent address to report weekly to their primary authority. In addition now under Chapter 62, certain adult offenders may now apply for deregistration. The Chapter also contains a new early termination of registration procedure.

This paper will concentrate on provisions dealing with the juvenile offender who has been adjudicated in juvenile court.



12. Sec. 20.04 - aggravated kidnapping (if, either (1) the judgment contains an affirmative finding under Art. 42.015 of the Code of Criminal Procedure that the victim was younger than 17 at the time of the offense, or (2) the order in the hearing or the papers in the case contain an affirmative finding that the victim was younger than 17 years of age)
13. The second violation of Sec. 21.08 (indecent exposure), but not if the second violation results in a deferred adjudication
14. An attempt, conspiracy, or solicitation to commit an offense or engage in any of the conduct listed in 1 through 12 above
15. A violation of the laws of another state, federal law, the laws of a foreign county or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed under 1 through 14 above, but not if the violation resulted in a deferred adjudication
16. The second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure but not if the second violation results in a deferred adjudication

B. Other Considerations Affecting a Juvenile's Obligation to Register

Art. 62.002 contains several other considerations which may affect a juvenile's obligation to register as a sex offender:

1. Chapter 62 applies to convictions or adjudications occurring after September 1, 1970.
2. Generally a pending appeal or pending pardon of an adjudication or conviction does not affect a duty to register as a sex offender.
3. However, if the conviction or adjudication is set aside on appeal or if the person receives a pardon on the basis of subsequent proof of innocence, the duty to register as a sex offender is terminated.

C. How Public is the Information?

1. Art. 62.004 discusses the central database maintained by the State of Texas and the availability of the stored information to the public.
  - (a) The department shall maintain a computerized central database containing the information required for registration. This central database may include the numeric risk level assigned a person.
  - (b) The information contained in the database is public information, except for information:
    - (1) regarding the person's social security number, driver's license number, or telephone number;
    - (2) that is required by the department under Art. 62.051(c)(7); or
    - (3) that would identify the victim of the offense for which the person is subject to registration
  - (c) Notwithstanding Chapter 730, Transportation Code, the department shall maintain in the database, and shall post on any department website related to the database, any photograph of the person that is available through the process for obtaining or renewing a personal identification certificate or driver's license. The department shall update the photograph in the database and on the website annually or as the photograph otherwise becomes available through the renewal process for the certificate or license.

- (d) A local law enforcement authority shall release any of the public information to any person who requests the information.
- (e) The department shall provide a licensing authority with notice of any person required to register under Chapter 62 who holds or seeks a license that is issued by the authority.
- (f) On the written request of a licensing authority that identifies an individual and states that the individual is an applicant for or a holder of a license issued by the authority the department shall release any information described in (a) to the licensing authority.
- (g) Not later than the third day after the date on which the applicable information becomes available through the person's registration or verification of registration, the department shall send notice of any person required to register under this chapter who is or will be employed, carrying on a vocation or a student at a public or private institution of higher education in this state to:
  - (1) for an institution in this state:
    - (A) the authority for campus security for that institution; or
    - (B) if an authority for campus security for that institution does not exist, the local law enforcement authority of:
      - (i) the municipality in which the institution is located; or
      - (ii) the county in which the institution is located, if the institution is not located in a municipality; or
  - (2) for an institution in another state, any existing authority for campus security at that institution.
- (h) On the written request of an institution of higher education that identifies an individual and states that the individual has applied to work or study at the institution, the department shall release database information to the institution.

- 2. Art. 62.006 provides that a peace officer or an employee of a law enforcement agency may request information about a person's duty to register if the peace officer or employee of the law enforcement agency has the person's driver's license number, personal identification certificate number or license plate number.

D. How Long Must a Person Register? - Art. 62.101

- 1. Art. 62.101(a) provides that most adult offenders, depending upon the offense for which they were convicted, have a lifetime duty to register as a sex offender unless they are eligible for the early termination of registration procedure which is set out later in this paper.
- 2. Under Art. 62.101(b), for a juvenile who was certified as an adult, the duty to register ends on the 10th anniversary of the date on which the person is released from a penal institution or discharges community supervision or the court dismisses the criminal proceedings against the person and discharges the person, whichever date is later.
- 3. Art. 62.101(c) provides that if the person's duty to register is based on an adjudication of delinquent conduct, the duty to register ends on the 10th anniversary of the date on which the disposition is made or the person completes the terms of the disposition, whichever date is later.

E. Statutory Registration Requirements for Texas Sex Offenders - Art. 62.051

1. General Requirements

- (a) A person who has a reportable conviction or adjudication or who is required to register as a condition of parole, release to mandatory supervision, or community supervision shall register or, if the person is a person for whom registration is completed under this chapter, verify registration as provided by Subsection (f), with the local law enforcement authority in any municipality where the person resides or intends to reside for more than seven days. If the person does not reside or intend to reside in a municipality, the person shall register or verify registration in any county where the person resides or intends to reside for more than seven days. The person shall satisfy the requirements of this subsection not later than the later of (1) the seventh day after the person's arrival in the municipality or county, or (2) the first date the local law enforcement authority of the municipality or county by policy allows the person to register or verify registration, as applicable. *(new language)*

*\*\* This new language seems to indicate that a local law enforcement authority could shorten the time to less than seven days.*

- b) The department shall provide the Texas Department of Criminal Justice, the Texas Youth Commission, the Texas Juvenile Probation Commission, and each local law enforcement authority, authority for campus security, county jail, and court with a form for registering persons required by this chapter to register.
- (c) The registration form shall require:
- (1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, drivers license number, shoe size, and home address;
  - (2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;
  - (3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;
  - (4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;
  - (5) an indication of each license, as defined by Article 62.005(g), that is held or sought by the person;
  - (6) an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution, and
  - (7) any other information required by the department.
- (d) The registration form must contain a statement and description of any registration duties the person has or may have under this chapter.

- (e) Not later than the third day after a person's registering, the local law enforcement authority with whom the person registered shall send a copy of the registration form to the department and, if the person resides on the campus of a public or private institution of higher education, to any authority for campus security for that institution.
- (f) A person for whom registration is completed under this chapter shall report to the applicable local law enforcement authority to verify the information in the registration form received by the authority under this chapter. The authority shall require the person to produce proof of the person's identity and residence before the authority gives the registration form to the person for verification. If the information in the registration form is complete and accurate, the person shall verify registration by signing the form. If the registration is not complete or not accurate, the person shall make any necessary additions or corrections before signing the form.
- (g) A person who is required to register or verify registration under this chapter shall ensure that the person's registration form is complete and accurate with respect to each item of information required by the form in accordance with Subsection (c ).
- (h) If a person subject to registration under this chapter does not move to an intended residence by the end of the seventh day after the date on which the person is released or the date on which the person leaves a previous residence, the person shall:
  - (1) report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person by not later than the seventh day after the date on which the person is released or the date on which the person leaves a previous residence, as applicable, and provide the officer with the address of the person's temporary residence; and
  - (2) continue to report to the person's supervising officer not less than weekly during any period of time in which the person has not moved to an intended residence and provide the officer with the address of the person's temporary residence.
- (i) If the other state has a registration requirement for sex offenders, a person who has a reportable conviction or adjudication, who resides in this state, and who is employed, carries on a vocation, or is a student in another state shall, not later than the 10th day after the date on which the person begins to work or attend school in the other state register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information. If the person is employed, carries on a vocation, or is a student at a public or private institution of higher education in the other state and if an authority for campus security exists at the institution, the person shall also register with that authority not later than the 10th day after the date on which the person begins to work or attend school.

F. Statutory Registration Requirements for Out-of -State- Sex Offenders

1. Art. 62.001(10) defines an "extra jurisdictional registrant" as a person who:

- (a) is required to register as a sex offender under:
  - (i) the laws of another state with which the department has entered into a reciprocal registration agreement;
  - (ii) federal law or the Uniform Code of Military Justice; or
  - (iii) the laws of a foreign country; and



- (b) is not otherwise required to register under this chapter because:
  - (i) the person does not have a reportable conviction for an offense under the laws of the other state, federal law, the laws of the foreign country, or the Uniform Code of Military Justice containing elements that are substantially similar to the elements of an offense requiring registration under this chapter; or
  - (ii) the person does not have a reportable adjudication of delinquent conduct based on a violation of an offense under the laws of the other state, federal law, or the laws of the foreign country containing elements that are substantially similar to the elements of an offense requiring registration under this chapter.

*\*\*\* The term "extra jurisdictional registrant" replaces the term "out of state registrant" which was used in the previous legislation.*

## 2. General Requirements for Extrajurisdictional Registration- Art. 62.052

- (a) An extra jurisdictional registrant is required to comply with the annual verification requirements of Art. 62.058 in the same manner as a person who is required to verify registration on the basis of a reportable conviction or adjudication.
- (b) The duty to register for an extra jurisdictional registrant expires on the date the person's duty to register would expire under the laws of the other state or foreign country had the person remained in that state or foreign country, under federal law, or under the Uniform Code of Military Justice, as applicable.
- (c) The department may negotiate and enter into a reciprocal registration agreement with any other state to prevent residents of this state and residents of the other state from frustrating the public purpose of the registration of sex offenders by moving from one state to the other.

## G. Prerelease Notification - Art. 62.053

- 1. Art. 62.053 covers the situation where a person has not yet registered but will have to register upon his or her release from a penal institution, the Institutional Division of the Texas Department of Criminal Justice or the Texas Youth Commission.
  - (a) Before a person who will be subject to registration under this chapter is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Youth Commission shall determine the person's level of risk to the community using the sex offender screening tool developed or selected under Article 62.007 and assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official of the penal institution shall:
    - (1) inform the person that:
      - (A) not later than the later of the seventh day after the date on which the person is released or after the date on which the person moves from a previous residence to a new residence in this state or not later than the later of the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, the person must register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to reside;
      - (B) not later than the seventh day after the day on which the person is released or the date on which the person moves from a previous residence to a new residence in this state, the person must, if the person has not moved to an intended residence, report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;

- (C) not later than the seventh day before the date on which the person moves to a new residence in this state or another state, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person;
- (D) not later than the 10th day after the date on which the person arrives in another state in which the person intends to reside, the person must register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information, if the other state has a registration requirement for sex offenders;
- (E) not later than the 30th day after the date on which the person is released, the person must apply to the department in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply to the department as required by this paragraph results in the automatic revocation of any driver's license or personal identification certificate issued by the department to the person; and

*\*\*\* failure to timely apply for driver's license or id could result in automatic suspension of driver's license or identification certificate*

- (F) the person must notify appropriate entities of any change in status as described by Article 62.057.
- (2) require the person to sign a written statement that the person was informed of the person's duties as described by Subdivision (1) or Subsection (g) or, if the person refuses to sign the statement, certify that the person was so informed;
  - (3) obtain the address where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints; and
  - (4) complete the registration form for the person.
- (b) On the seventh day before the date on which a person who will be subject to registration under this chapter is due to be released from a penal institution, or on receipt of notice by a penal institution that a person who will be subject to registration under this chapter is due to be released in less than seven days, an official of the penal institution shall send the person's completed registration form and numeric risk level to the department and to:
- (1) the applicable local law enforcement authority in the municipality or county in which the person expects to reside, if the person expects to reside in this state; or
  - (2) the law enforcement agency that is identified by the department as the agency designated by another state to receive registration information, if the person expects to reside in that other state and that other state has a registration requirement for sex offenders.
- (c) If a person who is subject to registration under this chapter receives an order deferring adjudication, placing the person on community supervision or juvenile probation, or imposing only a fine, the court pronouncing the order or sentence shall make a determination of the person's numeric risk level using the sex offender screening tool developed or selected under Article 62.007, assign to the person a numeric risk level of one, two, or three, and ensure that the prerelease notification and registration requirements specified in this article are conducted on the day of entering the order or

sentencing. If a community supervision and corrections department representative is available in court at the time a court pronounces a sentence of deferred adjudication or community supervision, the representative shall immediately obtain the person's numeric risk level from the court and conduct the prerelease notification and registration requirements specified in this article. In any other case in which the court pronounces a sentence under this subsection, the court shall designate another appropriate individual to obtain the person's numeric risk level from the court and conduct the prerelease notification and registration requirements specified in this article.

- (d) If a person who has a reportable conviction described by Art. 62.001(5)(H) or (I) is placed under the supervision of the pardons and paroles division of the Texas Department of Criminal Justice or a community supervision and corrections department under Art. 42.11, the division or community supervision and corrections department shall conduct the prerelease notification and registration requirements specified in this article on the date the person is placed under the supervision of the division or community supervision and corrections department. If a person who has a reportable adjudication of delinquent conduct described by Art. 62.001(5)(H) or (I) is, as permitted by Sec. 60.002, Family Code, placed under the supervision of the Texas Youth Commission, a public or private vendor operating under contract with the Texas Youth Commission, a local juvenile probation department, or a juvenile secure pre-adjudication or post-adjudication facility, the commission, vendor, probation department, or facility shall conduct the prerelease notification and registration requirements specified in this article on the date the person is placed under the supervision of the commission, vendor, probation department, or facility.
- (e) Not later than the eighth day after receiving a registration form under Subsection (b), (c), or (d), the local law enforcement authority shall verify the age of the victim, the basis on which the person is subject to registration under this chapter, and the person's numeric risk level. The local law enforcement authority shall immediately provide notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate in accordance with Article 62.054. On receipt of a notice under this subsection, the local law enforcement authority shall provide notice to the superintendent of the public school district in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate in accordance with Article 62.054.

- (1) if the person intends to reside in another state and to work or attend school in this state, the person must, not later than the later of the seventh day after the date on which the person begins to work or attend school or the first date the applicable local law enforcement authority by policy allows the person to register or verify registration, register or verify registration with the local law enforcement authority in the municipality or county in which the person intends to work or attend school;
- (2) if the person intends to reside in this state and to work or attend school in another state and if the other state has a registration requirement for sex offenders, the person must:
  - (A) not later than the 10<sup>th</sup> day after the date on which the person begins to work or attend school in the other state, register with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information; and
  - (B) if the person intends to be employed, carry on a vocation, or be a student at a public or private institution of higher education in the other state and if an authority for campus security exists at the institution, register with that authority not later than the 10th day after the date on which the person begins to work or attend school; and
- (3) regardless of the state in which the person intends to reside, if the person intends to be employed, carry on a vocation or be a student at a public or private institution of higher education in this state, the person must:
  - (A) not later than the later of the seventh day after the date on which the person begins to work or attend school or the first date the applicable authority by policy allows the person to register, register with:
    - (i) the authority for campus security for that institution; or
    - (ii) except as provided by Article 62.153(e), if an authority for campus security for that institution does not exist, the local enforcement authority of:
      - (a) the municipality in which the institution is located; or
      - (b) the county in which the institution is located, if the institution is not located in a municipality; and
  - (B) not later than the seventh day after the date the person stops working or attending school, notify the appropriate authority for campus security or local law enforcement authority of the termination of the person's status as a worker or student.

#### H. Circumstances Requiring Notice to Superintendent or School Administrator - Art. 62.054

1. Under Art. 62.054, law enforcement authorities are required to give notice of a sex offender to school district officials, when certain circumstances are present. The statute provides:
  - (a) A local law enforcement authority shall provide notice to the superintendent and each administrator under Article 62.053(e) or 62.055(f) only if:
    - (1) the victim was at the time of the offense a child younger than 17 years of age or a student enrolled in a public or private secondary school;
    - (2) the person subject to registration is a student enrolled in a public or private secondary school; or

(3) the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for an offense under Section 43.25 or 43.26, Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under either of those sections.

(b) A local enforcement authority may not provide notice to the superintendent or any administrator under Article 62.053(e) or Article 62.055(f) if the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for an offense under Section 25.02, Penal Code, or an offense under the laws of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense under that section.

I. Obligations of the Registrant When There is a Change of Address - Art. 62.055

1. If a registrant intends to move, Art. 62.055 requires that he notify authorities of his intent:

(a) If a person required to register under this chapter intends to change address, regardless of whether the person intends to move to another state, the person shall, not later than the seventh day before the intended change, report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person and provide the authority and the officer with the person's anticipated move date and new address. If a person required to register changes address, the person shall, not later than the later of the seventh day after changing the address or the first date the applicable local law enforcement authority by policy allows the person to report, report in person to the local law enforcement authority in the municipality or county in which the person's new residence is located and provide the authority with proof of identity and proof of residence.

(b) Not later than the third day after receipt of notice under Subsection (a), the person's juvenile probation officer, community supervision and corrections department officer, or parole officer shall forward the information provided under Subsection (a) to the local law enforcement authority designated as the person's primary registration authority by the department and, if the person intends to move to another municipality or county in this state, to the applicable local law enforcement authority in that municipality or county.

(c) If the person moves to another state that has a registration requirement for sex offenders, the person shall, not later than the 10th day after the date on which the person arrives in the other state, register with the law enforcement agency that is identified by the department as the agency designated by that state to receive registration information.

(d) Not later than the third day after receipt of information under Subsection (a) or (b), whichever is earlier, the local law enforcement authority shall forward this information to the department and, if the person intends to move to another municipality or county in this state, to the applicable local law enforcement authority in that municipality or county.

(e) If a person who reports to a local law enforcement authority under Subsection (a) does not move on or before the anticipated move date or does not move to the new address provided to the authority the person shall:

(1) not later than the seventh day after the anticipated move date, and not less than weekly after that seventh day, report to the local law enforcement authority designated as the person's primary registration authority by the department and provide an

explanation to the authority regarding any changes in the anticipated move date and intended residence; and

- (2) report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person not less than weekly during any period in which the person has not moved to an intended residence.
- (f) If the person moves to another municipality or county in this state, the department shall inform the applicable local law enforcement authority in the new area of the person's residence not later than the third day after the date on which the department receives information under Subsection (a). Not later than the eighth day after the date on which the local law enforcement authority is informed under Subsection (a) or under this subsection, the authority shall verify the age of the victim, the basis on which the person is subject to registration under this chapter, and the person's numeric risk level. The local law enforcement authority shall immediately provide notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district in which the person subject to registration intends to reside by mail to the office of the superintendent or administrator, as appropriate in accordance with Article 62.054. On receipt of a notice under this subsection, the superintendent shall release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, nurses, and counselors.
- (g) The local law enforcement authority shall include in the notice to the superintendent of the public school district and the administrator of any private primary or secondary school located in the public school district, any information the authority determines is necessary to protect the public, except:
  - (1) the person's social security number, driver's license number, or telephone number; and
  - (2) any information that would identify the victim of the offense for which the person is subject to registration.
- (h) If the person moves to another state, the department shall, immediately on receiving information under Subsection (d):
  - (1) inform the agency that is designated by the other state to receive registration information, if that state has a registration requirement for sex offenders; and
  - (2) send to the Federal Bureau of Investigation a copy of the person's registration form, including the record of conviction and a complete set of fingerprints.

J. Requirements Relating to Driver's License or Personal Identification Certificate - Art. 62.060

1. Art. 62.060 requires that any registered sex offender apply for a driver's license or personal identification certificate or renew their existing driver's license or personal identification certificate in a timely manner or face penalties. The statute specifically provides:
  - (a) A person subject to registration shall apply to DPS for the issuance of, as applicable, an original or renewal driver's license under Sec. 521.272, Transportation Code, or an original or renewal personal identification certificate under Sec. 521.103, Transportation Code, or an original or renewal commercial driver's license or commercial driver learner's permit under Sec. 521.033, Transportation Code, not later than the 30th day after the date:
    - (1) the person is released from a penal institution or is released by a court on community supervision or juvenile probation; or

(2) DPS sends written notice to the person of the requirements of this article.

(b) The person shall annually renew in person each driver's license or personal identification certificate issued by the department to the person, including each renewal, duplicate, or corrected license or certificate, until the person's duty to register under this chapter expires.

K. Requirement Relating to the Giving of a DNA Specimen - Art. 62.061

A person required to register as a sex offender shall comply with a request for a DNA specimen made by a law enforcement agency under Sec. 411.1473, Government Code.

L. Limitation on Newspaper Publication - Art. 62.062

Except for the provision contained in Art. 62.056, relating to sex offenders with a numeric risk level of three, a law enforcement authority may not publish notice in a newspaper or other periodical or circular concerning a person's registration under this chapter if the only basis for the registration is one or more adjudications of delinquent conduct.

*This is new language and for most purposes bars newspaper publication re: juvenile sex offenders.*

M. Failure to Comply With Registration Requirements - Art. 62.102

1. Art. 62.102 provides that failure to comply with any of the requirements of Chapter 62 constitutes a criminal offense:

(a) A person commits an offense if the person is required to register and fails to comply with any requirements of this chapter.

(b) An offense under this article is:

(1) a state jail felony if the person's duty to register expires under Art. 62.101(b) or (c).  
*(Generally this involves persons with a ten year period of registration and would cover most juveniles.)*

(2) a felony of the third degree if the person's duty to register expires under Art. 62.101(a) and who is required to verify registration once each year under Art. 62.058 (law enforcement verification of registration information).

(3) a felony of the second degree if the person's duty to register expires under Art. 62.101(a) and who is required to verify registration once each 90-day period under Art. 62.058 (law enforcement verification of registration information).

(c) If it is shown at the trial of a person for an offense or an attempt to commit an offense under this article that the person has a previous conviction for an offense or an attempt to commit the offense, the punishment is increased to the punishment for the next highest degree of felony. *(This language concerning an attempted offense has been added to the statute. Query: how does one attempt not to register as a sex offender?)*

N. Removing Registration Information When Duty to Register Expires - Art. 62.251

When a person is no longer required to register as a sex offender under Chapter 62, DPS shall remove all information about the person from the sex offender registry. This article sets out the procedures for removing that information.

*This provision previously only applied to juveniles. It now also applies to adults.*

**III. RISK ASSESSMENT SCREENING TOOL - Art. 62.007, Code of Criminal Procedure**

A. The Risk Assessment Review Committee

Article 62.007 requires the Texas Department of Criminal Justice to establish a risk assessment review committee.

1. Makeup of the Risk Assessment Review Committee - Art. 62.007(a).

The review committee must have at least seven members and, to the extent feasible, include at least:

- a. one member having experience in law enforcement;
- b. one member having experience working with juvenile sex offenders
- c. one member having experience as a sex offender treatment provider
- d. one member having experience working with victims of sex offenses;
- e. the executive director of the Council on Sex Offender Treatment; and
- f. one sex offender treatment provider registered under Chapter 110, Occupations Code, and selected by the executive director of the Council on Sex Offender Treatment to serve on the review committee.

2. Duties of the Risk Assessment Review Committee - Art. 62.007(b).

The review committee is to function in an oversight capacity. It has four main duties:

- a. develop or select, from among existing tools or from any tool recommended by the Council on Sex Offender Treatment, a sex offender screening tool to be used in determining the level of risk of a person subject to registration;
- b. ensure that staff is trained on the use of the screening tool;
- c. monitor the use of the screening tool in the state;
- d. analyze other screening tools as they become available and revise or replace the existing screening tool if warranted.

B. The Sex Offender Screening Tool - Art. 62.007(c).

The tool must use an objective point system under which a person is assigned a designated number of points for each of various factors. The screening tool selected must be one that is adapted to use the following general guidelines:



1. level one (low): a designated range of points on the sex offender screening tool indicating that the person poses a low danger to the community and will not likely engage in criminal sexual conduct;
  2. level two (moderate): a designated range of points on the sex offender screening tool indicating that the person poses a moderate danger to the community and might continue to engage in criminal sexual conduct; and
  3. level three (high): a designated range of points on the sex offender screening tool indicating that the person poses a serious danger to the community and will continue to engage in criminal sexual conduct.
- C. The Designated Risk Level May Be Overridden in Limited Circumstances - Art. 62.007(d)
1. The risk assessment review committee, the Texas Department of Criminal Justice, the Texas Youth Commission, or a court may override a risk level only if the entity:
    - a. believes that the risk level assessed is not an accurate prediction of the risk the offender poses to the community; and
    - b. documents the reason for the override in the offender's case file.
- D. Unsealing of Sealing Records for Purposes of Determining a Person's Risk Level - Art. 62.007(e)
- Notwithstanding Chapter 58 of the Family Code, records and files, including records that have been sealed under Sec. 58.003, relating to a person for whom a court, the Texas Department of Criminal Justice, or the Texas Youth Commission is required under this article to determine a level of risk shall be released to the court, department, or commission, as appropriate, for the purpose of determining the person's risk level.
- E. The Risk Assessment Level is Not Confidential - Art. 62.007(g)
- The numeric risk level assigned to a person using the sex offender screening tool is not confidential and is subject to disclosure under Chapter 552, Government Code.
- F. Additional Public Notice for Offenders With a Risk Level of Three - Art. 62.056
1. The statute provides that if a person is assigned a risk level of three, additional notice must be given to the public:
    - (a) On receipt of notice under this chapter that a person subject to registration is due to be released from a penal institution, has been placed on community supervision or juvenile probation, or intends to move to a new residence in this state, the department shall verify the person's numeric risk level assigned under this chapter. If the person is assigned a numeric risk level of three, the department shall, not later than the seventh day after the date on which the person is released or the 10<sup>th</sup> day after the date on which the person moves, provide written notice mailed or delivered to at least each address, other than a post office box, within a one-mile radius, in an area that has not been subdivided, or a three-block area, in an area that has been subdivided, of the place where the person intends to reside. In providing written notice under this subsection, the department shall use employees of the department whose duties in providing the notice are in addition to the employees' regular duties.

- (b) The department shall provide the notice in English and Spanish and shall include in the notice any information that is public information under this chapter. The department may not include any information that is not public information under this chapter.
- (c) The department shall establish procedures for a person with respect to whom notice is provided under Subsection (a), other than a person subject to registration on the basis of an adjudication of delinquent conduct, to pay to the department all costs incurred by the department in providing the notice. The person shall pay those costs in accordance with the procedures established under this subsection.
- (d) On receipt of notice under this chapter that a person subject to registration under this chapter is required to register or verify registration with a local law enforcement authority and has been assigned a numeric risk level of three, the local law enforcement authority may provide notice to the public in any manner determined appropriate by the local law enforcement authority including publishing notice in a newspaper or other periodical or circular in circulation in the area where the person intends to reside, holding a neighborhood meeting, posting notices in the area where the person intends to reside, distributing printed notices to area residents, or establishing a specialized local website. The local law enforcement authority may include in the notice only information that is public information under this chapter.
- (e) An owner, builder, seller, or lessor of single-family residential real property or any improvement to residential real property or that person's broker, salesperson, or other agent or representative in a residential real estate transaction does not have a duty to make a disclosure to a prospective buyer or lessee about registrants under this chapter. To the extent of any conflict between this subsection and another law imposing a duty to disclose information about registered sex offenders, this subsection controls.

#### **IV. EXEMPTIONS FROM REGISTRATION**

##### **A. FOR CERTAIN YOUNG ADULT SEX OFFENDERS - Art. 62.301**

###### **1. Who is Eligible?**

- a. A person who is required to register only as a result of a single reportable conviction or adjudication, other than an adjudication of delinquent conduct; and the court has entered in the appropriate judgment or has filed with the appropriate papers a statement of an affirmative finding described by Art. 42.017 or Art. 42.12, Sec. 5(g)

*The finding that (1) at the time of the offense the defendant was younger than 19 years of age and the victim was at least 13 of age, and the conviction was based solely on the ages of the defendant and the victim at the time of the offense.*

- b. A person who was convicted or placed on deferred adjudication before Sept. 1, 2001, for an offense under Sec. 21.11, Sec. 22.011, 22.021 or 43.25, Penal Code may petition the court for an exemption. The court may consider the petition if the petition states and the court finds that the defendant would have been entitled to the entry of an affirmative finding under Art. 42.017 or Art. 42.12, Sec.5(g), had the conviction or placement on deferred adjudication community supervision occurred after Sept. 1, 2001.

###### **2. Procedure**

- a. After a hearing on the petition, the court may issue an order exempting the person from registration if it appears by a preponderance of the evidence:

- (1) as presented by a registered sex offender treatment provider, that the exemption does not threaten public safety; and
- (2) that the person's conduct did not occur without the consent of the victim or intended victim.

3. Withdrawal of the Order of Exemption

An order exempting the person from registration does not expire, but the court shall withdraw the order if after the order is issued the person receives a reportable conviction of adjudication.

B. EXEMPTIONS FROM REGISTRATION FOR CERTAIN JUVENILES - Chapter 62, Subchapter H

1. Motion and Hearing Generally. - Art. 62.351

- (a) During or after disposition of a case under Section 54.04, Family Code, for adjudication of an offense for which registration is required under this chapter, the juvenile court on motion of the respondent shall conduct a hearing to determine whether the interests of the public require registration under this chapter. The motion may be filed and the hearing held regardless of whether the respondent is under 18 years of age. Notice of the motion and hearing shall be provided to the prosecuting attorney.
- (b) The hearing is without a jury and the burden of persuasion is on the respondent to show by a preponderance of evidence that the criteria of Article 62.352(a) have been met. The court at the hearing may make its determination based on:
  - (1) the receipt of exhibits;
  - (2) the testimony of witnesses'
  - (3) the representations of counsel for the parties; or
  - (4) the contents of a social history report prepared by the juvenile probation department that may include the results of testing and examination of the respondent by a psychologist, psychiatrist, or counselor.
- (c) All written matter considered by the court shall be disclosed to all parties as provided by Sec. 54.04(b), Family Code.
- (d) If a respondent, as part of a plea agreement, promises not to file a motion seeking an order exempting the respondent from registration under this chapter, the court may not recognize a motion filed by a respondent under this article.

2. The Order Generally - Art. 62.352

- (a) The court shall enter an order exempting a respondent from registration under this chapter if the court determines:
  - (1) that the protection of the public would not be increased by registration of the respondent under this chapter; or
  - (2) that any potential increase in protection of the public resulting from registration of the respondent is clearly outweighed by the anticipated substantial harm to the respondent and the respondent's family that would result from registration under this chapter.

- (b) After a hearing under Art. 62.351 or under a plea agreement described by Art. 62.355(b), the juvenile court may enter an order:
  - (1) deferring decision on requiring registration under this chapter until the respondent has completed treatment for the respondent's sexual offense as a condition of probation or while committed to the Texas Youth Commission; or
  - (2) requiring the respondent to register as a sex offender but providing the registration information is not public and is restricted to use by law enforcement and criminal justice agencies, the Council on Sex Offender Treatment and public or private institutions of higher education.
- (c) If the court enters an order deferring its decision on requiring registration, the court retains discretion and jurisdiction to require, or exempt the respondent from, registration under this chapter at any time during the treatment or on the successful or unsuccessful completion of treatment, except that during the period of deferral, registration may not be required. Following successful completion of treatment, the respondent is exempted from registration under this chapter unless a hearing under this subchapter is held on motion of the state, regardless of whether the respondent is 18 years of age or older, and the court determines the interests of the public require registration. Not later than the 10th day after the date of the respondent's successful completion of treatment, the treatment provider shall notify the juvenile court and prosecuting attorney of the completion.
- (d) Information that is the subject of an order described by Subsection (b)(2) may not be posted on the internet or released to the public.

*Items 1 and 2 above describe the procedure formally unknown as "Unregistration." The practitioner needs to be mindful of who can seek exemption through this process:*

- a. Any juvenile who would, upon adjudication, be subject to the registration requirement who has a pending adjudication for a "reportable conviction or adjudication."*
- b. Any child in the Texas Youth Commission who has not been released on parole (and who has not been registered as a result of a prior probation or adjudication in the same case).*
- c. Any child who was assessed a determinate sentence and who has been transferred to the Texas Department of Criminal Justice - Institutional Division (the adult prison system) and who has not yet been released on parole.*

3. Motion, Hearing, and Order Concerning Person Already Registered As a Result of a Texas Adjudication - Art. 62.353

- (a) A person who has registered as a sex offender for an adjudication of delinquent conduct, regardless of when the delinquent conduct or the adjudication for the conduct occurred, may file a motion in the adjudicating juvenile court for a hearing seeking:
  - (1) exemption from registration under this chapter as provided by Art. 62.351; or
  - (2) an order under Art. 62.352(b)(2) that the registration become nonpublic.
- (b) The person may file a motion under Subsection (a) in the original juvenile case regardless of whether the person, at the time of filing the motion, is 18 years of age or older. Notice of the motion shall be provided to the prosecuting attorney. A hearing on the motion shall be provided as in other cases under this subchapter.

- (c ) Only one subsequent motion may be filed under Subsection (a) if a previous motion under this article has been filed concerning the case.
- (d) To the extent feasible, the motion under Subsection (a) shall identify those public and private agencies and organizations, including public or private institutions of higher education, that possess sex offender registration information about the case.
- (e) The juvenile court, after a hearing, may:
  - (1) deny a motion filed under Subsection (a)
  - (2) grant a motion described by Subsection (a)(1); or
  - (3) grant a motion described by Subsection (a)(2).
- (f) If the court grants a motion filed under Subsection (a), the clerk of the court shall by certified mail, return receipt requested, send a copy of the order to the department, to each local law enforcement authority that the person has proved to the juvenile court has registration information about the person, and to each public or private agency or organization that the person has proved to the juvenile court has information about the person that is currently available to the public with or without payment of a fee. The clerk of the court shall by certified mail, return receipt requested, send a copy of the order to any other agency or organization designated by the person. The person shall identify the agency or organization and its address and pay a fee of \$20 to the court for each agency or organization the person designates.
- (g) In addition to disseminating the order under Subsection (f), at the request of the person, the clerk of the court shall by certified mail, return receipt requested, send a copy of the order to each public or private agency or organization that at any time following the initial dissemination of the order under Subsection (f) gains possession of sex offender registration information pertaining to that person, if the agency or organization did not otherwise receive a copy of the order under Subsection (f).
- (h) An order under Subsection (f) must require the recipient to conform its records to the court's order either by deleting the sex offender registration information or changing its status to nonpublic, as applicable. A public or private institution of higher education may not be required to delete the sex offender registration information under this subsection.
- (i) A private agency or organization that possesses sex offender registration information the agency or organization obtained from a state, county, or local governmental entity is required to conform the agency's or organization's records to the court's order on or before the 30th day after the date of the entry of the order. Unless the agency or organization is a public or private institution of higher education, failure to comply in that period automatically bars the agency or organization from obtaining sex offender registration information from any state, county, or local governmental entity, this this state in the future.

*This item describe the procedure formally unknown as "Deregistration." Be mindful it contains the procedure only for deregistration of individuals with a Texas adjudication.*

4. Motion, Hearing, and Order Concerning Person Already Registered Because of Out-of-State Adjudication - Art. 62.354
  - (a) A person required to register as a sex offender in this state because of an out-of state adjudication of delinquent conduct may file in the juvenile court of the person's county of residence a petition under Art. 62.351 for an order exempting the person from registration under this chapter.
  - (b) If a person is already registered as a sex offender in this state because of an out-of-state adjudication of delinquent conduct, the person may file in the juvenile court of the person's county of residence a petition under Art. 62.353 for an order removing the person from sex offender registries in this state.
  - (c) On receipt of a petition under this article, the juvenile court shall conduct a hearing and make rulings as in other cases under this subchapter.
  - (d) An order entered under this article requiring removal of registration information applies only to registration information derived from registration in this state.
5. Waiver of Hearing - Art. 62.355
  - (a) The prosecuting attorney may waive the state's right to a hearing under this subchapter and agree that registration under this chapter is not required. A waiver under this subsection must state whether the waiver is entered upon a plea agreement.
  - (b) If the waiver is entered under a plea agreement, the court, without a hearing, shall:
    - (1) enter an order exempting the respondent from registration under this chapter; or
    - (2) under Section 54.03(i), Family Code, inform the respondent that the court believes a hearing under this article is required and give the respondent the opportunity to:
      - (A) withdraw the respondent's plea of guilty, nolo contendere, or true; or
      - (B) affirm the respondent's plea and participate in the hearing.
  - (c) If the waiver is entered other than under a plea agreement, the court without a hearing, shall enter an order exempting the respondent from registration under this chapter.
6. Effect of Certain Orders - Art. 62.356
  - (a) A person who has an adjudication of delinquent conduct that would otherwise be reportable under Art. 62.001(5) does not have a reportable adjudication of delinquent conduct for purposes of this chapter if the juvenile court enters an order under this subchapter exempting the person from the registration requirements of this chapter.
  - (b) If the juvenile court enters an order exempting a person from registration under this chapter, the respondent may not be required to register in this or any other state for the offense for which registration was exempted.
7. Appeal of Certain Orders - Art. 62.357
  - (a) Notwithstanding Sec. 56.01, Family Code, on entry by a juvenile court of an order under Art. 62.352(a) exempting a respondent from registration under this chapter, the prosecuting attorney may appeal that order by giving notice of appeal within the time required under Rule

26.2(b), Texas Rules of Appellate Procedure. The appeal is civil and the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in exempting the respondent from registration under this chapter. The appeal is limited to review of the order exempting the respondent from registration under this chapter and may not include any other issues in the case.

- (b) A respondent may under Sec. 56.01, Family Code, appeal a juvenile court's order under Art. 62.352(a) requiring registration in the same manner as the appeal of any other legal issue in the case. The standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in requiring registration.

## **V. EARLY TERMINATION OF CERTAIN PERSONS' OBLIGATION TO REGISTER - Chapter 62, Subchapter I**

*The legislature added a new provision providing for the early termination of a person's obligation to register as a sex offender. Under Art. 62.401 and 62.402, the Council on Sex Offender Treatment, in accordance with 42 U.S.C. Section 14071 (the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program) is to determine the minimum required registration period for each "reportable convictions or adjudications." The Council must then compile and publish a list of reportable convictions or adjudications for which a person must register for a period that exceeds the minimum required registration period under federal law. Under Art. 62.403, the Council is also charged with the task of developing a new "Individual Risk Assessment". Thereafter registered sex offenders may request an evaluation under the individual risk assessment and then request early termination of their registration obligation. The pertinent statutes are set out below:*

### 1. Individual Risk Assessment - Art. 62.403

- (a) The council by rule shall establish, develop, or adopt an individual risk assessment tool or a group of individual risk assessment tools that:
  - (1) evaluates the criminal history of a person required to register under this chapter; and
  - (2) seeks to predict:
    - (A) the likelihood that the person will engage in criminal activity that may result in the person receiving a second or subsequent reportable adjudication or conviction; and
    - (B) the continuing danger, if any, that the person poses to the community.
- (b) On the written request of a person with a single reportable adjudication or conviction that appears on the list published under Art. 62.402(b), the council shall:
  - (1) evaluate the person using the individual risk assessment tool or group of individual risk assessment tools established, developed, or adopted under Subsection (a); and
  - (2) provide to the person a written report detailing the outcome of an evaluation conducted under Subdivision (1).
- (c) An individual risk assessment provided to a person under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code.

### 2. Motion for Early Termination - Art. 62.404

- (a) A person required to register under this chapter who has requested and received an individual risk assessment under Art. 62.403 may file with the trial court that sentenced the person for the reportable conviction or adjudication a motion for early termination of the person's obligation to register under this chapter.

(b) A motion filed under this article must be accompanied by:

- (1) a written explanation of how the reportable conviction or adjudication giving rise to the movant's registration under this chapter qualifies as a reportable conviction or adjudication that appears on the list published under Art. 62.402(b); and
- (2) a certified copy of a written report detailing the outcome of an individual risk assessment evaluation conducted under Art. 62.403(b)(1).

3. Hearing on Petition - Art. 62.405

(a) After reviewing a motion filed with the court under Article 62.404, the court may:

- (1) deny without a hearing the movant's request for early termination; or
- (2) hold a hearing on the motion to determine whether to grant or deny the motion.

(b) The court may not grant a motion filed under Art. 62.404 if:

- (1) the motion is not accompanied by the documents required under Art. 62.404(b); or
- (2) the court determines that the reportable conviction or adjudication for which the movant is required to register under this chapter is not a reportable conviction or adjudication for which the movant is required to register for a period that exceeds the minimum required registration period under federal law.

4. Costs of Individual Risk Assessment and of Court - Art. 62.406

A person required to register under this chapter who files a motion for early termination of the person's registration obligation under this chapter is responsible for and shall remit to the council and to the court, as applicable, all costs associated with and incurred by the council in providing the individual risk assessment or by the court in holding a hearing under this subchapter.

5. Effect of Granting Early Termination - Art. 62.407

(a) If, after notice to the person and to the prosecuting attorney and a hearing, the court grants a motion filed under Art. 62.404 for the early termination of a person's obligation to register under this chapter, notwithstanding Art. 62.101, the person's obligation to register under this chapter ends on the later of:

- (1) the date the court enters the order of early termination; or
- (2) the date the person has paid each cost described by Sec. 62.406.

(b) If the court grants a motion filed under Art. 62.404 for the early termination of a person's obligation to register under this chapter, all conditions of the person's parole, release to mandatory supervision, or community supervision shall be modified in accordance with the court's order.

6. No applicability - Art. 62.408

This subchapter does not apply to a person without a reportable conviction or adjudication who is required to register as a condition of parole, release to mandatory supervision, or community supervision.