

**JUVENILE SEX OFFENDER REGISTRATION:
BACK TO THE FUTURE?**

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I. Overview of Sex Offender Registration Laws

A. Historical Basis

Texas enacted a sex offender registration system in 1991 that applied to both adults and juveniles. This original version was meant to be confidential and only for use by law enforcement officers during criminal investigations. This changed dramatically in 1994 with the enactment of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. §14071, and the law included public registration.

There have been several sex offender laws since, including Megan's Law, requiring notification when a sex offender moves into a neighborhood. All of these laws have one thing in common: they stem from horribly violent acts perpetuated by adults against children. Unfortunately, they also apply to juveniles without regard to the differences between child offenders and adult predators. Statutes designed to address the cases of adults preying on children were thus expanded to include child offenders often experimenting with other children of a similar age.

B. Turbulence Ahead?

1. New Federal Legislation

The United States Congress recently enacted Legislation requiring each State to comply with the federal Sex Offender Registration and Notification Act (SORNA), or lose millions of dollars of federal funding. This is also known as the Adam Walsh Act and the text is available on the Department of Justice website. Several sections of SORNA are retroactive, and although nothing has been altered in the Texas juvenile registration system, the impact is unclear. One question that comes to mind is can children who have previously been exempted or successfully deregistered can be required to once again register? No one knows for certain but the law states that juveniles who are prosecuted and convicted as adults of a sex offense are covered by SORNA and are treated identically to adult sex offenders. Juvenile offenders not prosecuted as adults are not required to register by SORNA **unless** the offender is 14 years of age or older at the time of the offense and has been adjudicated delinquent for an offense comparable to or more severe than aggravated sexual abuse (as described in section 2241 of title 18, United States Code), or an attempt or conspiracy to commit such an offense. Aggravated sexual abuse includes "engaging" in a sexual act with a child under the age of 12. (see USC f 2241(C)). State offenses that are comparable to this federal offense are those that cover:

- engaging in a sexual act with another by force or the threat of serious violence (see 18 U.S.C. 2241(a));
- engaging in a sexual act with another by rendering unconscious or involuntarily drugging the victim (see 18 U.S.C. 2241(b)); or
- **engaging in a sexual act with a child under the age of 12 (see 18 U.S.C. 2241(c)).**

Obviously the landscape may be rapidly changing in this area but SORNA has many opponents and for now at least nothing has changed in the Texas juvenile registration system.

However, SORNA must be implemented by July 27, 2009 or federal funding will be reduced for non-compliant jurisdictions by 10% pursuant to the Byrne Justice Assistance Grant.

Whatever the future holds, at least for now the following still apply in juvenile cases that do not apply in adult cases:

- 1) Any juvenile adjudication can be exempted or deregistered. Many offenses that could never be exempted or later deregistered for adults remain eligible for juveniles.
- 2) Juvenile sex offender registration can be deferred while the juvenile is on probation, or even in TYC.
- 3) Registration can be nonpublic.
- 4) Retroactivity is not an impediment.
- 5) No limits on number of juvenile adjudications.
- 6) Registration is for only 10 years after disposition or end of supervision, whichever is longer.

C. New Texas School Provisions

1. Notification to School Required

(a) A law enforcement agency that arrests any person or refers a child to the office or official designated by the juvenile board who the agency believes is enrolled as a student in a public primary or secondary school, for an offense listed in Subsection (h), shall attempt to ascertain whether the person is so enrolled. If the law enforcement agency ascertains that the individual is enrolled as a student in a public primary or secondary school, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of that arrest or referral within 24 hours after the arrest or referral is made, or on the next school day. If the law enforcement agency cannot ascertain whether the individual is enrolled as a student, the agency shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is believed to be enrolled of that arrest or detention within 24 hours after the arrest or detention, or on the next school day. If the individual is a student, the superintendent shall promptly notify all instructional and support personnel who have responsibility for supervision of the student. All personnel shall keep the information received in this subsection confidential. The State Board for Educator Certification may revoke or suspend the certification of personnel who intentionally violate this subsection. Within seven days after the date the oral notice is given, the law enforcement agency shall mail written notification, marked "PERSONAL and CONFIDENTIAL" on the mailing envelope, to the superintendent or the person designated by the superintendent. Both the oral and written notice shall contain sufficient details of the arrest or referral and the acts allegedly committed by the student to enable the superintendent or the superintendent's designee to determine whether there is a reasonable belief that the student has engaged in conduct defined as a felony offense by the Penal Code. The information contained in the notice may be considered by the superintendent or the superintendent's designee in making such a determination.

(a-1) The superintendent or a person designated by the superintendent in the school district may send to a school district employee having direct supervisory responsibility

over the student the information contained in the confidential notice under Subsection (a) if the superintendent or the person designated by the superintendent determines that the employee needs the information for educational purposes or for the protection of the person informed or others.

(b) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a public primary or secondary school, for an offense or for any conduct listed in Subsection (h) of this article, the office of the prosecuting attorney acting in the case shall orally notify the superintendent or a person designated by the superintendent in the school district in which the student is enrolled of the conviction or adjudication and whether the student is required to register as a sex offender under Chapter 62. Oral notification must be given within 24 hours of the time of the order or on the next school day. The superintendent shall within 24 hours of receiving notification from the office of the prosecuting attorney, [promptly—] notify all instructional and support personnel who have regular contact with the student. Within seven days after the date the oral notice is given, the office of the prosecuting attorney shall mail written notice, which must contain a statement of the offense of which the individual is convicted or on which the adjudication, deferred adjudication, or deferred prosecution is grounded and a statement of whether the student is required to register as a sex offender under Chapter 62.

(c) A parole or probation office having jurisdiction over a student described by Subsection (a), (b), or (e) who transfers from a school or is subsequently removed from a school and later returned to a school or school district other than the one the student was enrolled in when the arrest, referral to a juvenile court, conviction, or adjudication occurred shall notify the new school officials of the arrest or referral in a manner similar to that provided for by Subsection (a) or (e)(1), or of the conviction or delinquent adjudication in a manner similar to that provided for by Subsection (b) or (e)(2). The new school officials shall promptly notify all instructional and support personnel who have regular contact with the student.

(d) The superintendent or a person designated by the superintendent in the school district may send to a school district employee having direct supervisory responsibility over the student the information contained in the confidential notice if *the* superintendent or the person designated by the superintendent determines that *the* school district employee needs the information for educational purposes or for the protection of the person informed or others.

(e)(1) A law enforcement agency that arrests, or refers to a juvenile court under Chapter 52, Family Code, an individual who the law enforcement agency knows Or believes is enrolled as a student in a private primary or secondary school shall make the oral and written notifications described by Subsection (a) to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(2) On conviction, deferred prosecution, or deferred adjudication or an adjudication of delinquent conduct of an individual enrolled as a student in a private primary or secondary school, the office of prosecuting attorney shall make the oral and written notifications

described by Subsection (b) of this article to the principal or a school employee designated by the principal of the school in which the student is enrolled.

(3) The principal of a private school in which the student is enrolled or a school employee designated by the principal may send to a school employee having direct supervisory responsibility over the student the information contained in the confidential notice, for the same purposes as described by Subsection (d) of this article.

(f) A person who receives information under this article may not disclose the information except as specifically authorized by this article. A person who intentionally violates this article commits an offense. An offense under this subsection is a Class C misdemeanor.

(g) The office of the prosecuting attorney or the office or official designated by the juvenile board shall, within two working days, notify the school district that removed a student to a disciplinary alternative education program under Section 37.006, Education Code, if:

(1) prosecution of the student's case was refused for lack of prosecutorial merit or insufficient evidence and no formal proceedings, deferred adjudication, or deferred prosecution will be initiated; or

(2) the court or jury found the student not guilty or made a finding the child did not engage in delinquent conduct or conduct indicating a need for supervision and the case was dismissed with prejudice.

(h) This article applies to any felony offense and the following misdemeanors:

(1) an offense under Section 20.02 [Unlawful Restraint], 21.08 [Indecent Exposure], 22.01 [Assault], 22.05 [Deadly Conduct], 22.07 [Terroristic Threat], or 71.02 [Engaging in Organized Crime], Penal Code;

(2) the unlawful use, sale, or possession of a controlled substance, drug paraphernalia, or marihuana, as defined by Chapter 481, Health and Safety Code; or

(3) the unlawful possession of any of the weapons or devices listed in Sections 46.01(1)-(14) or (16), Penal Code, or a weapon listed as a prohibited weapon under Section 46.05, Penal Code.

(i) A person may substitute electronic notification for oral notification where oral notification is required by this article. If electronic notification is substituted for oral notification, any written notification required by this article is not required.

(j) The notification provisions of this section concerning a person who is required to register as a sex offender under Chapter 62 do not lessen the requirement of a person to provide any additional notification prescribed by that chapter.

2. Removal of Sex Offender from the Regular Classroom

As of September 1, 2007, there is an entirely new procedure for educating (and removing) students who must register as a sex offender. If the student is under court supervision for a sex offense the school district **MUST** remove the student to an alternative education placement for at least one semester.

The law reads as follows:

SECTION 3. Chapter 37, Education Code, is amended by adding Subchapter I to read as follows:

SUBCHAPTER I. PLACEMENT OF REGISTERED SEX OFFENDERS

Sec. 37.301. DEFINITION. In this subchapter, "board of trustees" includes the board's designee.

Sec. 37.302. APPLICABILITY. This subchapter:

(1) applies to a student who is required to register as a sex offender under Chapter 62, Code of Criminal Procedure; and

(2) does not apply to a student who is no longer required to register as a sex offender under Chapter 62, Code of Criminal Procedure, including a student who receives an exemption from registration under Subchapter I3, Chapter 62, Code of Criminal Procedure, or a student who receives an early termination of the obligation to register under Subchapter I, Chapter 62, Code of Criminal Procedure.

Sec. 37.303. REMOVAL OF REGISTERED SEX OFFENDER FROM REGULAR CLASSROOM. Notwithstanding any provision of Subchapter A, on receiving notice under Article 15.27, Code of Criminal Procedure, or Chapter 62, Code of Criminal Procedure, that a student is required to register as a sex offender under that chapter, a school district shall remove the student from the regular classroom and determine the appropriate placement of the student in the manner provided by this subchapter.

Sec. 37.304. PLACEMENT OF REGISTERED SEX OFFENDER WHO IS UNDER COURT SUPERVISION. (a) A school district shall place a student to whom this subchapter applies and who is under any form of court supervision, including probation, community supervision, or parole, in the appropriate alternative education program as provided by Section 37.309 for at least one semester.

(b) If a student transfers to another school district during the student's mandatory placement in an alternative education program under Subsection (a), the district to which the student transfers may:

(1) require the student to complete an additional semester in the appropriate alternative education program without conducting a review of the student's placement for that semester under Section 37.306; or

(2) count any time spent by the student in an alternative education program in the district from which the student transfers toward the mandatory placement requirement under Subsection (a).

Sec. 37.305. PLACEMENT OF REGISTERED SEX OFFENDER WHO IS NOT UNDER COURT SUPERVISION. A school district may place a student to whom this subchapter applies and who is not under any form of court supervision in the appropriate alternative education program as provided by Section 37.309 for one semester or in the regular classroom. The district may not place the student in the regular classroom if the district board of trustees determines that the student's presence in the regular classroom:

- (1) threatens the safety of other students or teachers;
- (2) will be detrimental to the educational process; or
- (3) is not in the best interests of the district's students.

Sec. 37.306. REVIEW OF PLACEMENT IN ALTERNATIVE EDUCATION PROGRAM. (a) At the end of the first semester of a student's placement in an alternative education program under Section 37.304 or 37.305, the school district board of trustees shall convene a committee to review the student's placement in the alternative education program. The committee must be composed of:

- (1) a classroom teacher from the campus to which the student would be assigned were the student not placed in an alternative education program;
- (2) the student's parole or probation officer or, in the case of a student who does not have a parole or probation officer, a representative of the local juvenile probation department;
- (3) an instructor from the alternative education program to which the student is assigned;
- (4) a school district designee selected by the board of trustees; and
- (5) a counselor employed by the school district.

(b) The committee by majority vote shall determine and recommend to the school district board of trustees whether the student should be returned to the regular classroom or remain in the alternative education program.

(c) If the committee recommends that the student be returned to the regular classroom, the board of trustees shall return the student to the regular classroom unless the board determines that the student's presence in the regular classroom:

- (1) threatens the safety of other students or teachers;
- (2) will be detrimental to the educational process; or
- (3) is not in the best interests of the district's students .

(d) If the committee recommends that the student remain in the alternative education program, the board of trustees shall continue the student's placement in the alternative education program unless the board determines that the student's presence in the regular classroom:

- (1) does not threaten the. safety of other students or teachers;
- (2) will not be detrimental to the educational process; and
- (3) is not contrary to the best interests of the district's students.

(e) If, after receiving a recommendation under Subsection (b), the school district board of trustees determines that the student should remain in an alternative education program, the board shall before the beginning of each school year convene the committee described by Subsection (a) to review, in the manner provided by Subsections (b), (c), and (d), the student's placement in an alternative education program.

Sec. 37.307. PLACEMENT AND REVIEW OF STUDENT WITH DISABILITY.

(a) The placement under this subchapter of a student with a disability who receives special education services must be made in compliance with the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 et seq.).

(b) The review under Section 37.306 of the placement of a student with a disability who receives special education services may he made only by a duly constituted admission, review, and dismissal committee. The admission, review, and dismissal committee may request that the

board of trustees convene a committee described by Section 37.306(a) to assist the admission, review, and dismissal committee in conducting the review.

Sec. 37.308. TRANSFER OF REGISTERED SEX OFFENDER. Except as provided by Section 37.304(b), a school district shall determine whether to place a student to whom this subchapter applies and who transfers to the district in the appropriate alternative education program as provided by Section 37.309 or in a regular classroom. The school district shall follow the procedures specified under Section 37.306 in making the determination.

Sec. 37.309. PLACEMENT IN DISCIPLINARY ALTERNATIVE EDUCATION PROGRAM OR JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM.

(a) Except as provided by Subsection (b), a school district shall place a student who is required by the board of trustees to attend an alternative education program under this subchapter in a disciplinary alternative education program.

(b) A school district shall place a student who is required by the board of trustees to attend an alternative education program under this subchapter in a juvenile justice alternative education program if:

- (1) the memorandum of understanding entered into between the school district and juvenile board under Section 37.01 I(k) provides for the placement of students to whom this subchapter applies in *the* juvenile justice alternative education program; or
- (2) a court orders the placement of the student in a juvenile justice alternative education program.

Sec. 37.310. FUNDING FOR REGISTERED SEX OFFENDER PLACED IN JUVENILE JUSTICE ALTERNATIVE EDUCATION PROGRAM. A juvenile justice alternative education program is entitled to funding for a student who is placed in the program under this subchapter in the same manner as a juvenile justice alternative education program is entitled to funding under Section 37.012 for a student who is expelled and placed in a juvenile justice alternative education program for conduct for which expulsion is permitted but not required under Section 37.007.

Sec. 37.311. CONFERENCE. (a) A student or the student's parent or guardian may appeal a decision by a school district board of trustees to place the student in an alternative education program under this subchapter by requesting a conference among the board of trustees, the student's parent or guardian, and the student. The conference is limited to the factual question of whether the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) If the school district board of trustees determines at the conclusion of the conference that the student is required to register as a sex offender under Chapter 62, Code of Criminal Procedure, the student is subject to placement in an alternative education program in the manner provided by this subchapter.

(c) A decision by the board or trustees under this section is final and may not be appealed.

Sec. 37.312. LIABILITY. This subchapter does not:

- (1) waive any liability or immunity of a governmental entity or its officers or employees; or
- (2) create any liability for or a cause of action against a governmental entity or its officers or employees.

Sec. 37.313. CONFLICTS OF LAW. To the extent of any conflict between a provision of this subchapter and a provision of Subchapter A, this subchapter prevails.

II. Registration Requirements

A. Art. 62.051. Registration:

(a) A person who has a reportable conviction¹ 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.
- (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, driver's 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 information 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 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.

B. Art. 62.005 Central Database; Public Information.

(a) The department shall maintain a computerized central database containing only the information required for registration under this chapter. The department may include in the computerized central database the numeric risk level assigned to a person under this chapter.

(b) The information contained in the database, including the numeric risk level assigned to a person under this chapter, is public information, with the exception of any information:

(1) regarding the person's social security number, driver's license number, or telephone number;

(2) that is required by the department under Article 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 under Section 521.103 or 521.272, Transportation Code. 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 public information described under Subsection (b) to any person who request the information from the authority. The authority may charge the person a fee not to exceed the amount reasonably necessary to cover the administrative costs associated with the authority's release of information to the person under this subsection.

(e) The department shall provide a licensing authority with notice of any person required to register under this chapter who holds or seeks a license that is issued by the authority. The department shall provide the notice required by this subsection as the applicable licensing information becomes available through the person's registration or verification of registration.

(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 by Subsection (a) to the licensing authority.

(g) For the purposes of Subsections (e) and (f):

(1) "License" means a license, certificate, registration, permit, or other authorization that:

(A) is issued by a licensing authority; and

(B) a person must obtain to practice or engage in a particular business, occupation, or profession.

(2) “Licensing authority” means a department, commission, board, office, or other agency of the state or a political subdivision of the state that issues a license.

(h) 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 or under Article 62.058, the department shall send notice of an y 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 any 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.

(i) On the written request of an institution of higher education described by Subsection (h) that identifies an individual and states that the individual has applied to work or study at the institution, the department shall release any information described by Subsection (a) to the institution.

III. Exemption of Juvenile Sex Offenders

A. Alternatives to Exemption Hearing.

1. Persuade State not to file the case.
2. Negotiated plea to an offense that does not involve sex offender registration.
3. Deferred prosecution- it does not trigger any registration requirements.
4. Convince State to waive hearing, and Court must grant if not part of plea, pursuant to Art. 62.355 of the Code of Criminal Procedure.
5. Plea bargain can specify no registration but unlike waiver it is subject to court “approval”.
6. Plea bargain deferring registration. Again subject to court accepting the plea agreement.

B. Exemption Hearing.

This scenario occurs when State or court has not followed any of the above options. The procedure is set forth in Article 62.351 as follows:

(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) 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 Section 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.

Art. 62.352 Order Generally

(e) The court shall enter an order excusing compliance with the registration requirements of 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 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 Article 62.351 or under a plea agreement described by Article 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 that the registration information is not public information and is restricted to us 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 described by Subsection (b)(1), 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.

IV. Deregistration.

1. This type of hearing allows currently registered offenders to be excused from further compliance with the registration laws and has been amended to address juvenile sex offenders who move to Texas from other States². The text of Article 62.353 Texas Code of Criminal Procedure is as follows:

(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 Article 62.351;
or

(2) an order under Article 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 this 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 the motion filed under Subsection (a);

(2) grant the motion described by Subsection (a)(1); or

(3) grant a motion described by Subsection (a)(2).

(f)) If the court grants the 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 confirm its records to the court's orders 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, country, or local governmental entity is required to conform the agency's or organization's records to the court's records to the court's order on or before the 30th day after the date of its 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 offenders registration information from any state, county or local governmental entity in this state in the future.

2. Analysis.

Deregistration can be a much more time-consuming and expensive undertaking than Exemption. It requires an individual already registered, perhaps for years, to ask the adjudicating court to re-open the matter and excuse registration. These cases are not as common today because of the "deferred" of registration in many cases. Even if the court can be convinced to order deregistration, it can still of course make it the limited, non-public type, a step short of total deregistration.

a. Jurisdiction and Filing

Subsection (b) authorizes the motion to be filed in the original juvenile proceeding where the registration occurred. This jurisdiction extends even though, as will frequently be the case, the registrant is 18 years of age or older at the time of the hearing.

b. Deregistration is now a two time opportunity.

c. Identification of Law Enforcement Agencies

The genie is already out of the bottle, unlike in Exemption requests, so it is incumbent upon counsel to identify and serve a deregistration order on all law enforcement agencies that may possess the information. This will include local, national and internet groups that have accessed the data from DPS within 30 days from the court's order, private and public databases must comply and delete the records or be automatically barred from receiving such records in the future. (Note the "deletion exception" of a public or private institution of higher education).

V. Consequences for Failure to Register

The Code of Criminal Procedure Art. 62.102, Failure to comply with registration requirements, sets out the followings:

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

(b) An offense under this article is:

(1) a state jail felony if the actor is a person whose duty to register expires under Article 62.101(b) or(c);

(2) a felony of the third degree if the actor is a person whose duty to register expires under Article 62.101(a) and who is required to verify registration once each year under Article 62.058; and

(3) a felony of the second degree if the actor is a person whose duty to register expires under Article 62.101(a) and who is required to verify registration once each 90-day period under Article 62.058.

(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 previously been convicted of an offense or an attempt to commit an offense under this article, the punishment for the offense or the attempt to commit the offense is increased to the punishment for the next highest degree of felony.

VI. Practical Applications

A. Gather information concerning Respondent and Your Respondent's Family

The legal test in these cases considers protection of the public; but emphasizes that even if the public would receive some increased protection, is that increases in protection outweighed by the anticipated harm to the respondent and the respondent's family. That means that as a juvenile's advocate, you must determine how the registration process, or in the case of exemption, the anticipated process, impacts the respondent and his family. Make a list of factors to consider, for example:

1. Respondent is Not A Threat To Re-offend.

- a. Age of Respondent
- b. Lack of Weapon
- c. Age of Complainant
- d. Good Student
- e. Career Plans
- f. Family Support
- g. Type of Contact
- h. Treatment Records
- i. Abel Screen
- j. Probation Performance
- k. Registered Sex Offender Therapist's Opinion

2. Substantial Harm to the Respondent and its Family

- a. Neighbors Hostile
- b. Lack of Employment
- c. Denial of College Admissions
- d. Denial of Scholarships Request
- e. Depression
- f. Physical Harm, Assaults
- g. Property Damage

3. Potential for Protection of the Public

- a. Intensive Supervision at Home
- b. Intensive Supervision at School
- c. Intensive Supervision while on Probation
- d. Intensive supervision while on Parole
- e. No Department of Justice statistics show a deterrent or protection effect from registration
- f. No scientific evidence registration is a deterrent.

The harm to respondent and family may be easier as a practical matter to show in cases of deregistration. For example, respondent and family may have been forced to move from an apartment complex because of the registration requirements. Respondent and siblings may have

been ridiculed at school because other children found the registration information on the internet. There are numerous scenarios such as these that you need to discover and present to the court.

Another issue that might be easy to overlook is what did your client look like at the time of the offense? A hulking 23-year-old seeking deregistration may not look anything like the 13-year-old offender. Get a picture for the court of how the juvenile appeared at the time of the offense.

B. Experts

It is critically important to obtain any and all psychological and psychiatric records concerning your client. Obtain a medical and records release from your client. Remember a parent must sign the release if he or she is still a juvenile. Examine the records to find out what treatment was given and whether it was successful. Meet with the treating experts and obtain their opinions concerning the risk to re-offend. Also consider hiring an independent expert such as a Registered Sex Offender Therapist to examine the records and render an opinion.

C. Work with Your Prosecutors

Oftentimes, prosecutors will agree to exemption or deregistration without the necessity of a formal hearing. Provide them with helpful records and opinions they may not have access to otherwise. Also provide them with names of teachers, students, co-workers, neighbors, and the like that have favorable opinions of your client. Remember protection of the public is an important factor, and if your client is not perceived as a threat by his or her community, let the State know.

Sometimes prosecutors will agree to limited (non-public registration), or to defer registration, and you must make a strategic decision whether to pursue total exemption or deregistration at the risk of complete public registration if you fail. Remember if the state agrees to waive a hearing, and it is not as part of a plea bargain, the court **must** approve the deregistration or exemption.

D. Know Your Probation Officer(s)

There may be several probation officers that have been involved with a particular sex offender. Determine who all these individuals are and find out their opinions. They may not all share the same conclusions. Also a social history report may be prepared by a probation officer in preparation for a hearing. These must be provided to counsel. A favorable recommendation for the respondent from a probation officer is worth its weight in gold at a hearing, and also in negotiations. Remember to always review the probation files and be prepared to address with prosecutors any negative factors they contain.

E. Be Sensitive to the Victim and the Victim's Family

The victim and the victim's family are a part of the public. Remember that they can be called to testify when protection of the public is to be considered by the court. They should not

be allowed to re-hash the offense, but if they have valid, current concerns based on recent actions by your client, that is certainly relevant information for the court. You might also be surprised to learn that some families are forgiving, especially given the young age of your client at the time of the offense, your client's progress, remorse, and lack of new criminal behavior. Oftentimes, in working with your prosecutors, you can get a sense of the victim's posture concerning Exemption or deregistration and proactively provide positive information for them to relay to the victim and victim's family.

F. Know Your Judge

Obviously, some courts may be more registration oriented than others, but stress to the court the differences between juvenile sex offenders and adult sex offenders. Point out that recidivism is much less likely with juvenile offenders and that detected early, they can be rehabilitated. Bring that picture to show your client's appearance at the time of the offense

Remember that the state can always waive its right to a hearing and the Court must then grant the request for exemption or deregistration by statute. There is no court discretion as long as a plea bargain is not involved.

G. Sealing of Records

Section 58.003(n) prohibits the sealing of the adjudication and disposition records as long as the duty to register exists. Once that requirement is over, due to deregistration, exemption, or expiration, then sealing of the underlying offense is possible as long as all other statutory requirements are met. (Remember that determinate sentencing cases cannot be sealed pursuant to 58.003(b) of the Family Code).

VII. Closing Thoughts on Texas Juvenile Sex Offender Registration Laws

Juveniles Really are Different

The experts I have consulted and the literature they rely on, support the conclusion that juvenile sex offenders can be treated and their behavior successfully modified so that they can become productive adults. The legislature of Texas has recognized this through the current law that allows the removal of the social stigma of sex offender status. Therefore, young people who made a mistake early in life now have a chance to function without the handicap of a high-tech scarlet letter, and Counsel should be vigorous in pursuing the remedies of exemption and deregistration.

ENDNOTES

¹ A reportable adjudication under Article 62.001(5)(H) the Texas Code of Criminal procedure means the following:

- (A) a conviction for a violation of Section 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02 (Prohibited sexual conduct), Penal Code;
- (B) a conviction for a violation of Section 43.05 (Compelling prostitution), 43.25 (sexual performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;
- (C) a conviction for a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually;
- (D) a conviction for a violation of Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C);
- (E) a conviction for a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or 20.04 (Aggravated kidnapping), Penal Code, if the judgment in the case contains an affirmative finding under Article 42.015;
- (F) the second conviction for a violation of Section 21.08 (Indecent exposure), Penal Code;
- (G) a conviction for an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit an offense listed in Paragraph (A), (B), (C), (D), or (E);
- (H) an adjudication of delinquent conduct;
 - (i) based on a violation of one of the offenses listed in Paragraph (A), (B), (C), (D), or (G) or, if the order in the hearing contains an affirmative finding that the victim or intended victim was younger than 17 years of age, one of the offenses listed Paragraph (E); or
 - (ii) for which two violations of the offense listed in Paragraph (F) are shown;
- (I) a deferred adjudication for an offense listed in:
 - (i) Paragraph (A), (B), (C), (D), or (G); or (ii) Paragraph (E) if the papers in the case contain an affirmative finding that the victim or intended victim was younger than 17 years of age;
- (J) a conviction under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B),(C),(D), (E), or (G);
- (K) an adjudication of delinquent conduct under the laws of another state, federal law, or the laws of a foreign country based on a violation of an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A),(B), (C), (D),(E), or (G);

(L) the second conviction under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of the offense of indecent exposure; or

(M) the second adjudication of delinquent conduct under the laws of another state, federal law, or the laws of a foreign country based on a violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure.

“Sexually violent offense” means any of the following offenses committed by a person 17 years of age or older;

(A) an offense under Section 21.11(a)(1) (Indecency with a child), 22.011 (sexual assault), or 22.021 (Aggravated sexual assault), Penal Code;

(B) an offense under Section 43.25 (Sexual performance by a child), Penal Code; (C) an offense under Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the defendant committed the offense with intent to violate or abuse the victim sexually ;

(D) an offense under Section 30.02 (Burglary), Penal Code, if the offense is punishable under Subsection (d) of that section and the defendant committed the offense with intent to commit a felony listed in Paragraph (A) or (C) of Subdivision (5); or

(E) an offense under the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice if the offense contains elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), or (D);

(7.) “Residence” includes a residence established in this state by a person described by Article 62.063(e).

(8) “Public or private institution of higher education” includes a college, university, community college, or technical or trade institute.

(9) “Authority for campus security” means the authority with primary law enforcement jurisdiction over property under the control of a public or private institution of higher education, other than a local law enforcement authority. Tex. Art. of Crim. Proc. 62.01(6)

² Art. 62.354 Motion, Hearing, & Order Concerning Person required to Register Because of Out-Of-State Adjudication:

(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 Article 62.351 for an order exempting the person from registration under this chapter.

(b) If the 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 Article 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.

VIII. Sample Petition and Orders

- A. Petition to De-Register Out-of-State Adjudication
- B. Agreed Order Excusing Sex Offender Registration
- C. Agreed Deregistration and Waiver of Hearing

SAMPLE “A”

Petition to De-register Out-of State Adjudication

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

PETITION TO EXCUSE COMPLIANCE WITH SEX OFFENDER REGISTRATION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES _____, and by and through his attorney of record, KEVIN L. COLLINS, and hereby requests that the Court excuse compliance with sex offender registration in this matter for all the following reasons:

I.

PARTIES AND SERVICE OF PROCESS

1) Petitioner _____ (“Petitioner”) is a resident of _____ County, _____. Respondent, the Bexar County District Attorney, may be served with citation and process at the following address:
_____:

2) Venue is proper in _____, Bexar County, Texas, pursuant to Art. 62.13(s) of the Code of Criminal Procedure.

II.

FACTUAL BACKGROUND

1) _____, “Petitioner”, was a juvenile residing in _____ at the time of the commission of his reportable offense of sexual assault of a minor. _____ date of birth is _____ and his SID Number is _____. He was convicted and sentenced in _____ on or about _____. He received probation and rehabilitation treatment while in _____, which he successfully completed. He moved to _____ with his mother and was placed on Texas probation pursuant to the Juvenile Interstate Compact. He was not required to register as a sex offender in _____, but was required to register as such by Texas Law. Petitioner files this action pursuant to Art. §62.13(e) (1) and (s) of the Code of Criminal Procedure.

2) Petitioner, now 21, successfully completed his term of probation in _____ County as of _____. Petitioner's juvenile case has already been sealed pursuant to _____ Law. He now attends college and lives in _____ County. _____, Registered Sex Offender Treatment Provider, has recently evaluated Petitioner and does not believe Petitioner poses a risk to re-offend.

3) Petitioner, is currently required to register as a sex offender in Texas due to his reportable conviction, including DPS website registration and he is in compliance with said registration.

4) Petitioner should not have to continue to register as a sex offender because the protection of the public would not be increased by said registration and/or any potential increase in protection of the public resulting from registration is clearly outweighed by the anticipated substantial harm to the Petitioner and the Petitioner's family that would result from continued registration.

III.

REQUESTED REMEDIES

1) Petitioner requests that the court grant relief pursuant to Article 62.354 of the Texas Code of Criminal Procedure and under subsection (e) excuse compliance with the registration requirements of said chapter.

2) In the alternative, Petitioner requests that the Court require pursuant to Article 62.354 of the Texas Code of Criminal Procedure, subsection (k), that the registration information not be public, and be restricted to use by law enforcement and criminal justice agencies, but prohibit said information from being posted on the internet or otherwise released to the public.

3) Petitioner also requests that this motion be sealed in this matter.

WHEREFORE, Petitioner respectfully requests that the Honorable Court set this matter for a hearing, and grant all requested relief, as well as any and all other relief this Court deems just and appropriate.

RESPECTFULLY SUBMITTED:

KEVIN L. COLLINS
VOGUE BUILDING, SUITE 250
600 NAVARRO STREET
SAN ANTONIO, TEXAS 78205
TELEPHONE: (210) 223-9480
FACSIMILE: (210) 227-1501
STATE BAR NO. 04625510

COUNSEL FOR PETITIONER

STATE OF TEXAS

*

*

COUNTY OF BEXAR

*

AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared Kevin L. Collins, who after being duly sworn stated:

"My name is Kevin L. Collins. I am the attorney for the Petitioner in the above-entitled and numbered cause. I have read the foregoing Petition to Excuse Compliance and swear that all of the allegations of fact contained therein are true and correct."

KEVIN L. COLLINS, AFFIANT

SUBSCRIBED AND SWORN TO BEFORE ME on this the ____ day of ____, 200__, to certify which witness my hand and seal of office.

Notary Public, State of Texas

Notary's Printed Name

My Commission Expires

FIAT

On the _____ day of _____, 200__ came on to be considered the above and foregoing Petition to Excuse Sex Offender Registration, and a request for hearing having been made, the same is hereby reset to be called at _____ on the _____ day of _____, 200__ in the _____ District Courtroom, Bexar County, Texas.

JUDGE PRESIDING

CERTIFICATE OF SERVICE

I, Kevin L. Collins, hereby certify that a true and correct copy of the foregoing Petition has been delivered to the Bexar County District Attorney's Office, Juvenile Division, on this the _____ day of _____, 200__.

KEVIN L. COLLINS

SAMPLE “B”

Agreed Order Excusing Sex Offender Registration

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

AGREED ORDER EXCUSING SEX OFFENDER REGISTRATION

On this the _____ day of _____, 200__ the parties agreed to the Motion to Excuse Compliance with Sex Offender Registration in the above entitled and numbered cause, and it appears to the Court that this Agreed Order should be honored and entered pursuant to Art. 62.355(c) of the Code of Criminal Procedure.

IT IS THEREFORE ORDERED that as to Juvenile Offender, D.O.B., _____, JUV SID No. _____:

1. Any and all Sex Offender registration requirements in this cause shall cease and he shall no longer be required to register as a sex offender.
2. Each agency or official listed below shall before the 30th day after the date this order is received, send to this Court all files and records concerning sex offender registration.
3. Each agency or official listed below before the 30th day after the date this order is received, shall delete from its records all index references to the files and records there are concerning sex offender registration.
4. Each agency or official listed below shall reply on inquiry that no Sex Offender registration record exists with respect to Juvenile Offender.
5. The Clerk of the Court shall send a certified copy of this order to the following:
 - a. List of State, Local, National, Public and Private entities.
6. Any other agencies or entities, public or private, that have sex offender registration information concerning Juvenile Offender.

SIGNED THIS the _____ of _____, 200__.

JUDGE PRESIDING

Assistant Bexar County District Attorney
Juvenile Division

Date

Kevin L. Collins
Attorney for Petitioner
SBOT No. 04625510

Date

SAMPLE ““C””

Agreed Deregistration and Waiver of Hearing

CAUSE NO. _____

IN THE MATTER OF

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IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

AGREED DEREGISTRATION AND WAIVER OF HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES _____, a minor child, by and through his attorney of record, Kevin L. Collins, and with the Bexar County District Attorney, hereby agree as follows:

I.

The prosecuting attorney hereby waives the State’s right to a hearing under Article 62.353(f) of the Code of Criminal Procedure, and agrees that any further compliance with sex offender registration be excused in this cause. This waiver is not entered pursuant to a plea agreement, but by agreement of the parties as authorized by Article 62.353(f) of the Code of Criminal Procedure.

Respectfully submitted and agreed to by the following parties:

Assistant Bexar County District Attorney,
Juvenile Division

Date

Kevin L. Collins
Attorney for Respondent
SBOT No. 04625510

Date

