

TABLE OF CONTENTS

I. Overview and History of Texas Sex Offender Registration Laws	1
A. Every Jurisdiction Has Them.....	1
B. History of Texas Sex Offender Registration	1
C. Continued Evolution of the Law	1
II. What Registration Involves.....	1
A. Article 62.02. Registration	1
B. Article 62.08. Central Database; Public Information.....	3
III. Un-registration and De-registration of Juvenile Sex Offenders	4
A. Un-registration.....	4
B. De-registration.....	7
IV. Practical Applications.....	9
A. Know Your Respondent and Respondent’s Family	9
B. Experts	9
C. Work With Your Prosecutors	9
D. Know Your Probation Officers	10
E. Be Sensitive to the Victim and the Victim’s Family.....	10
F. Know Your Judge	10
G. Sealing of Records.....	10
V. Trends in Sex Offender Laws.....	11
A. U.S. Supreme Court Considering Megan’s Law.....	11
B. Juveniles are Different.....	11
VI. Forms	12
A. Agreed Order Excusing Sex Offender Registration.....	12
B. Agreed De-Registration and Waiver of Hearing	13

JUVENILE SEX OFFENDER REGISTRATION: NECESSARY INFORMATION OR HIGH-TECH SCARLET LETTER?

I. Overview and History of Texas Sex Offender Registration Laws

A. Every Jurisdiction Has Them.

There exists in every state and in the federal government, sex offender registry laws. This type of information is currently available in more than thirty states on-line, including Texas.

B. History of Texas Sex Offender Registration.

Texas enacted a sex offender registration system in 1991 that applied to adults and juveniles alike. This original version of the sex offender statutes was meant to be confidential and only for use by law enforcement officers during criminal investigations. A dramatic change occurred in 1995 and sex offender information in Texas became available to the general public, as well as law enforcement officers.

Although there are many differences in the duration of registration between adults and juveniles, the records of both are equally public, and juvenile sex offender information can be found on the internet and pursuant to written request.

C. Continued Evolution of the Law.

In response to the new public nature of juvenile sex offender status, the Texas legislature enacted Code of Criminal Procedure article 62.13, effective September 1st, 2001, to allow juvenile courts to excuse adjudicated sex offenders from registration requirements, a process known as un-registration.¹ The new law also authorized judges to excuse further registration of juveniles who are already registered, a process known as de-registration. The de-registration process is retroactive and will apply to any offender, regardless of when the adjudication or conduct occurred.

The new law is applied by use of a balancing test that considers first whether requiring registration of a particular juvenile sex offender increases the protection to the public; and even if so, weighs it against harm to the offender and the offender's family. The bulk of this paper will explore the application of that law, with tips for practitioners.

II. What Registration Involves

A. Art. 62.02. Registration.

1. Statutory Registration Requirements for Registered Sex Offenders are as follow:

- (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 (d), with the local law enforcement authority in any municipality where the person resides or

¹ None of these provisions apply to sex offenders convicted for conduct occurring while an adult.

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 seventh day after the person's arrival in the municipality or county.

- (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, county jail, and court with a form for registering persons required by this chapter to register. 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 62.08(f), that is held or sought by the person; and
 - (6) any other information required by the department.
- (c) 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.
- (d) 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.
- (e) 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 (b).
- (f) 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.
- (g) 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.

B. Art. 62.08. Central Database; Public Information.

1. Accessible Registration Information is Statutorily Defined as Follows:

- (a) The department shall maintain a computerized central database containing only the information required for registration under this chapter.
- (b) The information contained in the database 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 62.02(b)(6); or
 - (3) that would identify the victim of the offense for which the person is subject to registration.
- (c) A local law enforcement authority shall release public information described under Subsection (b) to any person who submits to the authority a written request for the information. 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.
- (d) 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.

- (e) 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 521.272, 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.
- (f) A local law enforcement authority shall release public information described under Subsection (b) to any person who submits to the authority a written request for the information. 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.
- (g) 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.
- (h) For the purposes of Subsections (d) and (e):
 - (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.
- (i) For the purposes of Subsection (e):
 - (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.

III. Un-registration and De-registration of Juvenile Sex Offenders

A. Un-registration.

1. Article 62.13 of the Texas Code of Criminal Procedure, subsections (a) through (k) sets for the procedure for un-registration:

- (a) A person who has an adjudication of delinquent conduct that would otherwise be reportable under Article 62.01(5) does not have a reportable adjudication of delinquent conduct for purposes of this chapter if the juvenile court enters an order under this article excusing compliance by the person with the registration requirements of this chapter.
- (b) 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.
- (c) 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 Subsection (e) 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.
- (d) All written matter considered by the court shall be disclosed to all parties as provided by Section 54.04(b), Family Code.
- (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.
- (f) The prosecuting attorney may waive the state's right to a hearing under this article and agree that registration under this chapter is not required. If the waiver is entered under a plea agreement, the court shall without a hearing enter an order excusing compliance with the registration requirements of this chapter or, under Section 54.03(j), Family Code, inform the respondent that the court believes a hearing under this article is required and give the respondent the opportunity to withdraw the respondent's plea of guilty, nolo contendere, or true or to affirm the respondent's plea and participate in the hearing. If the waiver is entered other than under a plea agreement, the court shall without a hearing enter an order excusing compliance with the registration requirements of this chapter. The waiver must state whether or not it is entered under a plea agreement. The respondent may as part of a plea agreement promise not to file a motion seeking an order excusing registration, in which case the court may not recognize the motion.

- (g) Notwithstanding Section 56.01, Family Code, on entry by a juvenile court of an order under Subsection (e) excusing 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 excusing compliance with registration. The appeal is limited to review of the order excusing compliance with registration and may not include any other issues in the case.
- (h) The respondent may under Section 56.01, Family Code, appeal the juvenile court's order 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 not excusing compliance with registration.
- (i) If the juvenile court enters an order excusing registration, the respondent may not be required to register in this or any other state for the offense for which registration was excused.
- (j) After a hearing under Subsection (b) or under a plea agreement under Subsection (f), the juvenile court may enter an order deferring decision on requiring registration until the respondent has completed a sex offender treatment program as a condition of probation or while committed to the Texas Youth Commission. The court retains discretion to require or to excuse registration at any time during the treatment program or on its successful or unsuccessful completion. During the period of deferral, registration may not be required.
- (k) After a hearing under Subsection (b) or under a plea agreement under Subsection (f), the juvenile court may enter an order requiring the respondent to register as a sex offender but provide that the registration information is not public information and is restricted to use by law enforcement and criminal justice agencies. Information obtained under this subsection may not be posted on the Internet or released to the public.

2. Analysis

It is important to note that un-registration is possible in any case where sex offender registration has not yet occurred. Cases adjudicated but pending disposition, TYC cases where the juvenile has not yet been released on parole, and determinate sentence cases where registration has not yet been required because adult parole has not yet been granted. In any of these instances, it is possible to conduct a hearing before the adjudicating court to ask that registration not occur.

(a) What is a Reportable Adjudication

Subsection (a) defines reportable adjudication to exclude a person whose registration has been excused by court order. Therefore, that person is totally excused from any and all registration requirements.

(b) Un-registration Hearing

The juvenile court must hold a hearing upon motion seeking un-registration, under the same cause number as the original petition, and heard anytime following disposition. The hearing is to the court and a jury is not authorized. Testimony from experts,

exhibits, and a social history report may be considered, as well as representations of counsel. If a social history report is prepared by probation, it must be disclosed to all parties.

The burden of proof at the hearing is a preponderance of the evidence, based on the balancing test of protection of the public versus harm to the respondent and the respondent's family. In fact, even if there is some evidence that protection of the public would be increased by registration, if that is outweighed by harm to the respondent and the respondent's family, then registration should not occur. The court can also adopt a middle ground and order a non-public registration. This means that the registration information is not disclosable over the internet and is not to be used except by law enforcement personnel conducting a criminal investigation (in effect the pre-1995 standard).

(c) Pursuant to Plea Bargain Agreement

This section enables the prosecutors and the defense attorney to strike a plea bargain that includes un-registration as part of the agreement. However, as with any plea agreement, the court is free to reject it, and may do so in regards to un-registration. However if the adjudicating court accepts the plea bargain, then it must order un-registration without a hearing.

There are several permutations possible in this area. The court may choose to accept the plea bargain, but only on the condition that a subsection (1) hearing is held. In such instance, the juvenile should be allowed to withdraw the plea or to proceed with the understanding a hearing will be held on the registration issue. Another scenario allows the prosecution to waive its right to a registration hearing without a plea agreement. This waiver of hearing must state whether it is part of the plea bargain. If it is not, the court must grant un-registration. The last wrinkle involves an agreement by the respondent not to file a motion for un-registration (or de-registration), and if the court accepts the same, respondent will have no recourse but to register as a sex offender as required by law.

(d) Appellate Rights

The state is authorized under subsection (g) to appeal if the Court excuses registration completely. The state cannot appeal a court's decision granting non-public registration. The state's notice of appeal must be filed within fifteen days of the order and is strictly limited to the registration issue.

The juvenile is also authorized to appeal, but only if the court orders full public registration.

B. De-registration.

1. This type of hearing allows currently registered offenders to be excused from further compliance with the registration laws. The relevant text of Article 62.13 Texas Code of Criminal Procedure is as follows:

(l) 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 excusal from registration as provided by Subsection (e) or seeking under Subsection (k) an order that the registration become nonpublic.

(m) The person may file a motion under Subsection (l) in the original juvenile case regardless of whether the person is at the time of filing 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 article.

(n) A motion may be filed under Subsection (l) only if a previous motion under this article has not been filed concerning that case.

(o) To the extent feasible, the motion under Subsection (l) shall identify those public and private agencies and organizations that possess sex offender registration information about the case.

(p) The juvenile court, after a hearing, may:

- (1) deny the motion;
- (2) grant the motion to excuse all registration; or
- (3) grant the motion to change the registration from public to nonpublic.

(q) If the court grants the motion, a copy of the court's order shall be sent to each public and private agency or organization that the court determines may be in possession of sex offender registration information. The order shall require the recipient to conform its records to the court's orders either by deleting the information or changing its status to non-public, as the order requires.

(r) A private agency or organization that possesses sex offender registration information it obtained from a state, county, or local governmental entity is required to conform its records to the court's order on or before the 30th day after the date of its entry. Failure to comply in that period automatically bars the agency or organization from obtaining sex offender registration information from any state, count, or local governmental entity in this state in the future.

2. Analysis.

De-registration can be a much more time-consuming and expensive undertaking than un-registration. It requires an individual already registered, perhaps for years, to ask the adjudicating court to re-open the matter and excuse registration. This affects countless numbers of cases because there was no un-registration choice until the recent statutory changes. Even if the court can be convinced to order de-registration, it can still of course make it the limited, non-public type, a step short of total de-registration.

(a) Jurisdiction and Filing

Subsection (m) 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 or older at the time of the hearing.

(b) De-registration is a one-time opportunity

If previous un-registration or de-registration motion has been filed, the court has no jurisdiction to consider the request. Counsel must be extremely careful when requesting either un-registration and de-registration, and realize that there is no second chance.

(c) Identification of Law Enforcement Agencies

The genie is already out of the bottle, unlike in un-registration requests, so it is incumbent upon counsel to identify and serve a de-registration 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. Subsection (r) provides that 30 days from the court's order, private databases must comply and delete the records or be automatically barred from receiving such records in the future.

IV. Practical Applications

A. Know Your 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 outweighed by the anticipated harm to the respondent and the respondent's family? That means that as a juvenile's counsel, you must find out how the registration process, or in the case of un-registration, the anticipated process, impacts the respondent and his family.

The harm to respondent and family may be easier as a practical matter to show in cases of de-registration. 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 de-registration may not look anything like the 13-year-old offender. Get a picture for the court!

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 to examine the records and render an opinion.

C. Work with Your Prosecutors

Oftentimes, prosecutors will agree to un-registration or de-registration 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 un-registration or de-registration 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 de-registration or un-registration.

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, or in hearing negotiations. Remember to always review probation's 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 un-registration or de-registration 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. The law is also fairly new, so you may find yourself in a position of educating the court on the law in the area. Be prepared to do so.

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

G. Sealing of Records

Section 58.003 of the Family Code allows a sealing of sex offender registration records. However, remember that Section 58.003(n) prohibits the sealing of the records as long as the duty to register exists. Once that requirement is over, due to de-registration, un-registration, or expiration, then sealing 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.

V. Trends in Sex Offender Registration Laws

A. U. S. Supreme Court considering constitutionality of Megan's Law

Currently the U. S. Supreme Court is considering whether some states punish convicted sex offenders twice, first with jail time or probation, then by putting their photographs and personal information on the internet. The debate is heated and ranges from Justice Scalia who asked in oral argument, "What is irrational or unconstitutional about warning people about others who may be dangerous?", to Justice Ginsburg's observation that, "A face plastered on the internet is comparable to shaming someone at a town square, or a scarlet letter."

B. Juveniles are Different

In the Supreme Court case referred to above, the Justices will decide whether and under what circumstances the convicted offender can be made part of a sex offender registry. The case does not explicitly deal with juvenile offenders, but regardless of the outcome always remember that juveniles 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 un-registration and de-registration.

FORMS

CAUSE NO. _____

IN THE INTEREST	*	IN THE DISTRICT COURT
	*	
OF	*	_____ JUDICIAL DISTRICT
	*	
_____, A MINOR CHILD	*	BEXAR COUNTY, TEXAS

AGREED ORDER EXCUSING SEX OFFENDER REGISTRATION

On this the _____ day of _____, 2003 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. 62.13(f) 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 _____, 2003.

JUDGE PRESIDING

Assistant Bexar County District Attorney
Juvenile Division

Date

Kevin L. Collins
Attorney for Respondent
SBOT No. 04625510

Date

CAUSE NO. _____

IN THE INTEREST

*

IN THE DISTRICT COURT

*

OF

*

_____ JUDICIAL DISTRICT

*

_____, A MINOR CHILD

*

BEXAR COUNTY, TEXAS

AGREED DE-REGISTRATION AND WAIVER OF HEARING

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES Juvenile Offender (“J.O.”), 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 62.13(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 62.13(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