

Beyond To Register or Not to Register: Practical and Ethical Issues in Juvenile Sex Offense Cases

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Juvenile Sex Offenses

- are disturbing.
- account for only 3.1 percent of all juvenile offenses.
- account for only 7.4 percent of all violent juvenile offenses.

But are over 25 percent of all sex offenses committed . (DOJ report 2009)

Juvenile Sex Offenders

- 1 out of 8 offenders is younger than age 12.
- Female offenders constitute 7 percent
- Early adolescence is the peak age for offenses against younger children.
- During mid to late adolescence, offenses against teenagers surge while offenses against victims under age 12 decline.

Juvenile Sex Offenders

- Some are well functioning
- Some have multiple problems.
- Some do well in school
- Some do not
- Some have experienced a high level of maltreatment or exposure to violence
- Some have no history of maltreatment
- Some have a history of childhood sexual abuse
- Some have no history of childhood sexual abuse

Registration Overview

- Where did this come from?
- Why do we do this?
- How does it work?
- Where is this going?

Where it All Started

- 1991
- Health and Safety Code
- Amended every legislative session
- Complex combination of federal and state laws
- All contained in Chapter 62 of the Code of Criminal Procedure

Federal Law

1989 Jacob Wetterling Minnesota

- 11 year old
- Abducted by masked man at gunpoint
- Never found
- No one ever charged with offense
- Mother told by a cop during the investigation that it would help in the search if there was a list of known sex offenders in the area

1994 Federal Law

- Mother campaigned for sex offender registry in Minnesota and then at federal level
- Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act
- Requires a state registry of sex offenders
- Requires states to track sex offenders for a minimum of 10 years after release into the community

Texas Law

- 1993 Ashley Estell
- 7 year old
- Abducted from playground
- Found strangled next day
- No signs of sexual assault
- Michael Blair, a sex offender, was convicted of her murder.

1995 Texas Law

- “Ashley’s Laws” expanded punishment and registration for sex offenders.
- Required registration for a period of years or up to lifetime registration
- Created child safety zones

Federal Law

- 1994 Megan Kanka
- 8 year old last seen riding her bike outside her home
- Lured into home of twice convicted sex offender who lived across the street with other sex offenders
- Raped and strangled and then raped again
- Body placed in toy box and dumped in park

1996 Federal Law

- Megan’s Law amended Jacob Wetterling Act
- Requires community notification when a convicted sex offender moves into a neighborhood
- Requires public dissemination of registry info

Federal Law

■ 1981 Adam Walsh

- 6 year old son of John Walsh, host of America's Most Wanted
- Went to Sears with mother who left him playing video games in toy department
- Disappeared after 7 minutes
- Two weeks later, severed head found in a canal 120 miles from his home

An Aside

- 27 years after the fact, the Florida police claimed that Ottis Toole was responsible.
- In 1983, Toole confessed to the crime.
- But the police somehow lost Toole's impounded car and machete, hindering their ability to proceed with the investigation.
- Toole was once a cellmate of Ted Bundy.
- Also working in south Florida at the time was Jeffrey Dahmer.

2006 Federal Law

- Adam Walsh Child Protection and Safety Act
 - Sex Offender Registration and Notification Act (SORNA) is title I
- Replaces Wetterling Act
- Includes possible lifetime registration for juveniles age 14+
- Most states rejected SORNA and in 2016 the feds issued a guideline stating that states may be considered to have complied with SORNA if state policies and practices promote public safety in a manner that does not undermine the overall SORNA objectives.

Federal Law

- 2003 Dru Sjodin
- 22-year-old student at the University of North Dakota disappears leaving the mall in Nov.
- A week later, a level 3 sex offender, Alfonso Rodriguez, Jr., was arrested in connection with her disappearance. Rodriguez admitted to being near the mall, had recently been released from prison – serving 23 years for stabbing and trying to kidnap a woman and had previously pleaded guilty to raping another woman.

Dru Sjodin

- Dru's body was recovered in April in Minnesota in the town where Rodriguez lived with his mother.
- Very high profile case with 1000's helping in search.
- Body brought across state lines making it a federal case and death penalty eligible.
- First death penalty case in a century in North Dakota.
- On August 30, 2006, Rodriguez was convicted and sentenced to death.

2006 Federal Law

Dru's Law

The Dru Sjodin National Sex Offender Public Website (NSOPW), is part of Adam Walsh.

It provides for an online sex offender database. The database allows the public to search for sex offender information by zip code or geographic radius.

Purposes of Registration

- Tracking sex offenders once released into the community
- And once released:
 - Assist law enforcement
 - Notification allows public to protect itself
 - Reduce recidivism

Release ?

- | | |
|--------------------|------------------|
| ■ Jacob Wetterling | ■ Capital Murder |
| ■ Ashley Estell | ■ Capital Murder |
| ■ Megan Kanka | ■ Capital Murder |
| ■ Adam Walsh | ■ Capital Murder |
| ■ Dru Sjodin | ■ Capital Murder |

Assist Law Enforcement

- Maybe ?

Ashley Estell is a cautionary tale of tunnel vision

Ashley's Laws

- Michael Blair was seen in the area where the victim's body was found.
- He had volunteered to help in the search
- Blair, who had a prior sexual offense, quickly became the lead suspect in this case.
- Blair was tried by a jury in 1994. The jury deliberated for 27 minutes before convicting Blair. He was sentenced to death.
- DNA testing later led to his exoneration

Public Protection

- The theory is that notification allows the public to protect itself
- The Texas Council on Sex Offender Treatment 2009 White Paper,
- "The fact is that there is no evidence that public registries reduce sex crimes. The registries however, have provided a false sense of security to the general public."

Public Protection – Registry as Hit List

California (75) Florida (30) Texas (29) South Carolina (18) Ohio (17) Washington (16) Illinois (15) Michigan (14) New York (14) Georgia (13) North Carolina (13) Colorado (12) Indiana (12) Maryland (11) Arizona (10) Virginia (9) Arkansas (8) Maine (8) Pennsylvania (8) Alabama (7) Oregon (7) Massachusetts (6) Nevada (6) Utah (6) West Virginia (6) Wisconsin (6) Kansas (5) Missouri (5) New Jersey (5) Oklahoma (5) New Mexico (4) Tennessee (4) Delaware (3) Idaho (3) Kentucky (3) Louisiana (3) Minnesota (3) Mississippi (3) Connecticut (2) Iowa (2) Montana (2) New Hampshire (2) Nebraska (1) South Dakota (1)

Reduce Recidivism

- University of Chicago Study - 2011
- Analyzed 20 years of FBI data (1984 to 2003)
- Little evidence supports the effectiveness of sex offender registries, either in practice or in potential.
- Rates of sex offense *do not decline* after the introduction of a registry or public access to a registry via the Internet

U. S. Department of Justice

2015 Report on Recidivism of Juveniles and Effectiveness of Treatment

- 5% recidivism for a sex offense after a 10-year period with treatment
- 9% recidivism for a sex offense after a 20-year period with treatment

Juvenile Registration is Different Than Adult Registration

- Registration length - 10 years after complete the terms of disposition
- Applies to
 - juveniles adjudicated in juvenile court
 - juveniles certified as adults
 - juveniles adjudicated in other states
- Failure to comply is a state jail felony
- Juvenile Judges have the discretion to exempt, defer or make non-public juvenile registration

Juvenile Law

Unregistration

- With pending adjudications
- Sent to TJJD and not been released on parole
- Transferred to TDCJ and not yet released on parole

Deregistration

- Already registered
- Have a continuing obligation to register

Juvenile Law

Unregistration

- What is the question?
- Whether the protection of the public would not be increased by registration **or**
- Whether any potential increase in protection is clearly outweighed by the anticipated substantial harm to the Respondent

Deregistration

- What is the question?
- Whether the protection of the public would not be increased by registration **or**
- Whether any potential increase in protection is clearly outweighed by the anticipated substantial harm to the Respondent

Juvenile Law

Unregistration

- Hearing
 - Before the judge
 - Juvenile has burden of persuasion
 - Preponderance standard

Deregistration

- Hearing
 - Before the judge
 - Juvenile has burden of persuasion
 - Preponderance standard

Juvenile Law

Unregistration

- Judge may rely on:
 - Witness testimony
 - Exhibits
 - Representations of counsel
 - Contents of social history report prepared by probation which may include psychological testing

Deregistration

- Judge may rely on:
 - Witness testimony
 - Exhibits
 - Representations of counsel
 - Contents of social history report prepared by probation which may include psychological testing

Juvenile Law

Unregistration Order

- Grant motion and exempt
- Grant motion and defer the decision until treatment is completed
- Make non-public

- Statute does not provide for denying the motion

Deregistration Order

- Grant motion and exempt
- Make non-public
- Deny motion

Out of State Adjudications

- If DPS determines the elements of the out-of-state adjudication are substantially similar to the elements of an offense listed in Chapter 62, then have to register (can appeal this in Travis Co.)
- File in juvenile court in the county of juvenile's residence in Texas
- Can file for unregistration or deregistration
- Same hearing/rulings as in other cases

Out of State Adjudications

- About 87,000 people are on the Texas registry.
- About 10,000 of those are on the registry for juvenile adjudications.
- Currently, most juveniles placed on the registry have out-of-state adjudications where there is no exemption process and they have not sought unregistration or deregistration.

Getting off of Registry

- When a juvenile's duty to register expires, they are not expunged from the registry system.
- The juvenile has the burden of notifying DPS that their duty to register has expired and then waiting until DPS gets around to deleting them.
- Juvenile must send copy of court order and notice of release from TJJD or notice from the probation department of when terms of disposition were completed or probation ended.

Where are we headed?

- HB 1144 (2015) created the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses
- Recommendations from Task Force:
- No registration will be the default position.(opposite of where we are now);

Where are we headed?

- Non-public registration may be requested by the prosecutor after unsuccessful discharge from sex offender treatment or upon notice of a second reportable adjudication;
- The prosecutor must prove that public safety is increased by registration;
- Information relating to non-public registration is available only to criminal justice agencies and specifically named entities.

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PROFESSIONAL ACTIVITIES

Board Certified in Criminal Law since 1999
Board Certified in Juvenile Law since 2001
Past Chair, Council, State Bar of Texas Juvenile Law Section
Past Chair, Dallas Bar Association, Juvenile Justice Committee
Exam Commission, Texas Board of Legal Specialization – Juvenile Law
Bar Register of Preeminent Women Lawyers – Martindale-Hubbell (AV Preeminent rating)

RECENT PRESENTATIONS

Dallas Bar Association, Juvenile Justice Committee CPS Seminar, June 8, 2017, “ICWA Basics” (Dallas, Texas)

Dallas Bar Association, October 6, 2016, Juvenile Law Section, “Sex Offender Registration” (Dallas, Texas)

Houston Bar Association, Juvenile Law Section, 5th Annual Juvenile Law Conference, September 10, 2016, “Sex Offender Registration” (Houston, Texas)

Dallas Bar Association, Juvenile Law Section, November 4, 2015, “Sex Offender Registration” (Dallas, Texas)

Dallas Bar Association, Juvenile Conference, October 8, 2015, “Sex Offender Cases in 30 Minutes” (Dallas, Texas)

Texas Criminal Defense Lawyers Association, Defending Juveniles Conference, September 10-11, 2015, “Sex Offender Cases” (Dallas, Texas)

Dallas Bar Association, October 24, 2014, Juvenile Law Section, “Sex Offender Registration” (Dallas, Texas)

Houston Bar Association, Fifth Annual Juvenile Law Conference, September 27, 2014, “Sex Offender Registration” (Houston, Texas)

State Bar of Texas Juvenile Section and Texas Juvenile Probation Commission, Nuts and Bolts of Juvenile Law, August 11, 2014, “Ethics: Sex Offender Registration” (Austin, Texas)

State Bar of Texas, Special Education, Child Welfare and the Juvenile Justice System, June 13, 2014, “Education Advocacy: Duties of the Guardian ad Litem” (Austin, Texas)

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I. INTRODUCTION

Since 1991, Texas has had some form of sex offender registration requirement. The statute has been amended and its reach expanded in many legislative sessions since then. It includes both adult as well as juvenile offenders. The laws regarding sex offender registration may be found in Chapter 62 of the Code of Criminal Procedure. The treatment of juvenile sex offenders is different than adult sex offenders in that Chapter 62 provides a mechanism to exempt juveniles from the registration requirements.

A. Generally

Sex Offender Registration basically involves the registration with a local law enforcement authority of information about the offender, including his or her place of residence. It also requires frequent re-registration, including whenever the offender moves his or her place of residence. It may also involve school notification.

The obligation to register for a juvenile offender expires ten years after the juvenile completes the terms of the disposition of the case.

The objectives of sex offender registration are to protect the public; inform residents so they can protect themselves and their families; decrease victimization; decrease recidivism; allow law enforcement to track the whereabouts of sex offenders following their release into the community. Notwithstanding the stated goals of sex offender registration, registries and public notification actually impede a youth's ability to participate in social networks and access education and employment opportunities, which in turn, increase the chance that a youth will participate in criminal or delinquent behavior in the future. Justice Policy Institute, "The Negative Impact of Registries on Youth. Why are Youth Different From Adults?"

B. Sex Offender Registration Is Collateral

Nearly every single court across the United States has held that sex offender registration and notification requirements are merely collateral consequences to conviction of a sex offense. *See Smith v. Doe*, 538 U.S. 84 (2003) (Supreme Court finds no violation of ex post facto clause in Alaska's sex offender registration statute because sex offender registration and notification fulfilled law enforcement, not punitive, purposes). Additionally, the sex offender registration statutes as applied to juveniles in Texas have been found to pass constitutional challenges for the same reason. The Texas juvenile sex offender registration statute does not violate due process of law. *In re M.A.H.*, 20 S.W.3d 860 (Tex. App.—Ft. Worth 2000, no pet.). The Texas sex offender registration statute does not violate the double jeopardy provisions of the U.S. Constitution. *Hooks v. State*, 144 S.W.3d 652

(Tex. App.—Beaumont 2004, no pet.). The Texas sex offender registration statute does not violate the prohibition on ex post facto laws. *Coronado v. State*, 148 S.W.3d 607 (Tex.App.—Houston [14th] 2004, no pet.); *Dean v. State*, 60 S.W.3d 217 (Tex.App.—Houston [14th] 2001, no pet.). The Texas sex offender registration statute does not violate the equal protection provision of the U.S. Constitution. *Aguirre v. State*, 127 S.W.3d 883 (Tex. App.—Austin 2004, no pet.). The Texas juvenile sex offender registration requirements do not constitute cruel and unusual punishment. *In re D.L.*, 160 S.W.3d 155 (Tex.App.—Tyler, 2005, no pet.).

C. Cases that Shaped Sex Offender Laws

Some particularly heinous cases involving the abduction and/or murder of children led to the passage of sex offender laws.

In October 1989, eleven year-old Jacob Wetterling lived in St. Joseph, Minnesota. He, his brother and a friend were riding their bicycles home from a convenience store when a masked man came out of a driveway, ordered the boys to throw their bikes into a ditch and lie on the ground. The man had a gun, so the boys complied. He asked each boy his age. Jacob's brother and friend were told to run toward a nearby wooded area, but Jacob was taken away. A massive search effort was undertaken to locate Jacob, but neither he nor his abductor have been found. In 1994, the Jacob Wetterling Crimes against Children and Sexually Violent Offender Registration Act, 42 U.S.C. Section 14071 (the Jacob Wetterling Act) was passed in his honor.

On Labor Day weekend in September 1993, Diana and Richard Estell spent part of the weekend at a season-opening soccer tournament at Carpenter Park in Plano, Texas. While 12 year-old son, Brett, played soccer, daughter Ashley played on the jungle gym at the adjacent playground. Diana Estell watched from her spot on a lawn chair, waving to Ashley and the seven year-old waved back. Diana turned her attention for a few moments to her son's game, looked back toward Ashley and she was gone. The Estells combed the grounds, asking scores of children, parents, soccer officials and police officers whether they had seen their daughter. There were no clues or witnesses. Aided by nearly 1,000 volunteers, searchers found the second-grader's lifeless body the next day on a dirt road about six miles from the park. An autopsy revealed no signs of sexual assault, but it was clear little Ashley had fought her killer before she was strangled. The girl's death prompted the Texas Legislature to pass tough sex offender laws called collectively "Ashley's Laws" effective in 1995.

Megan Kanka, an eight year-old, lived across the street from a man named Jesse Timmendequas, a convicted sex offender. He had recently been released from the New Jersey treatment-oriented correctional

facility for sex offenders. On July 29, 1994, Timmendequas tricked Megan to come inside his house by saying he had a puppy that was too young to come outside. He proceeded to rape her, and tried to kill her by slamming her head into a dresser and suffocating her with a plastic bag. He finally strangled her to death with a belt. He moved her body to his car, where he raped her again before placing her in a toy box and dumping her in a park. A jury later convicted Timmendequas of Megan's rape and murder and sentenced him to death. Megan Kanka's death resulted in the New Jersey Legislature passing Megan's Law, which requires notification when a convicted sex offender moves into a neighborhood. In 1996, the Jacob Wetterling Act was amended by Megan's Law.

On July 27, 1981, six year-old Adam Walsh went with his mother Reve to a Sears store to shop for lamps. The store was about one mile from their home, across from the Hollywood, Florida police station. Reve left her son in the toy department playing computer games with several other children while she went to the lamp department, several aisles away. She was gone about seven minutes. When she returned to the video games, Adam and the other children were gone. Reve searched for Adam for two hours, making two trips to her car, until someone called the police. The police believe a 17 year-old security guard asked a handful of rowdy kids who were playing video games in the toy department to leave the store. Adam, it is believed was grouped in with those kids, and he was left alone outside the store. Two weeks later, his severed head was found in a canal 120 miles away. The boy's body was never recovered and no one was ever charged in the case. The Adam Walsh Child Protection and Safety Act was signed into law in 2006, on the 25th anniversary of the abduction and murder. Adam Walsh was the son of John Walsh, host of the television program America's Most Wanted. The Sex Offender Registration and Notification Act ("SORNA") is title I of that Act and provides a comprehensive set of minimum standards for sex offender registration and notification in the United States.

D. Where Are We Now?

When Congress passed the Jacob Wetterling Act, every state was required to create sex offender registries. This was an unfunded mandate. States did not receive any additional federal funding to comply but a state would be financially penalized if it failed to comply with the Act's requirements. States would forfeit 10% of their federal Byrne Formula Grant Funding criminal justice funds. Under the Jacob Wetterling Act, at a minimum, states must maintain a state registry of offenders and an Internet site with public information; classify offenders as either sexually violent, sexually violent predators, or those who committed sex crimes against minors; and create procedures for offenders to verify and update

residential information.

There was no federal requirement that the states include juvenile offenders under the Jacob Wetterling Act, but Texas was one of 28 states to expand registration requirements to include juveniles. As of 2007, 31 states include juveniles on their sex offender registries. Justice Policy Institute; State by State Registration Survey (2007). As of 2013, that list included 35 states.

Ashley's Laws, effective in 1995, expanded the laws in Texas regarding sex offenders to include, among other things, a prohibition against court ordered probation (a judge can only order deferred adjudication probation) and a mandate that all conditions of probation include child safety zones. Further, it required all sex offenders to register for a period of years, for some violent sex offenders, the law required registration for life.

The Pam Lychner Sex Offender Tracking and Identification Act of 1996 required the Attorney General to establish a national database (the National Sex Offender Registry or 'NSOR') by which the FBI could track certain sex offenders. The law also mandated certain sex offenders living in a state without a minimally sufficient sex offender registry program to register with the FBI and for the FBI to periodically verify the addresses of the sex offenders to whom the Act pertains. The law also allows for the dissemination of information collected by the FBI to federal, state and local officials responsible for law enforcement activities or for running background checks pursuant to the National Child Protection Act (42 U.S.C. §5119, *et. seq.*).

The 1996 Megan's Law changed sex offender registration to include community notification provisions when a convicted sex offender moves into a neighborhood.

Under SORNA, states are required to set up a tiered system of registration based on the severity of the underlying crime. Beginning with Tier I, offenders are required to register for 15 years and must update their status annually. Tier II crimes require registration for 25 years and status updates every six months. Tier III crimes require registration for life and status updates every three months.

"Convictions" for SORNA purposes include convictions of juveniles who are prosecuted as adults. It does not include juvenile delinquency adjudications, **except** under the circumstances specified in 42 U.S.C. §16911(8), which stipulate juvenile registration only if the juvenile was at least 14 years old at the time of the offense and was adjudicated delinquent for committing (or attempting or conspiring to commit) a sexual act with another by force, by the threat of serious violence, or by rendering unconscious or drugging the victim. Office of Justice Programs. However,

the Department of Justice guidelines as applied to SORNA additionally state that SORNA provides a minimum and states are free to expand the reach of the registration requirements.

SORNA required that all states come into compliance with its provisions by July 27, 2009. SORNA also provided that the Attorney General could allow two 1-year extensions for compliance by July 27, 2011. Further, the SORNA guidelines state that SORNA is retroactive and that application of the SORNA standards to sex offenders whose convictions predate SORNA creates no ex post facto problem “because the SORNA sex offender registration and notification requirements are intended to be non-punitive, regulatory measures adopted for public safety purposes, and hence may validly be applied and enforced by criminal sanctions against sex offenders whose predicate convictions occurred prior to the creation of these requirements.” See U.S. Department of Justice National Guidelines for Sex Offender Registration and Notification, Final Guidelines, June 2008; *Smith v. Doe*, 538 U.S. 84 (2003). States and territories which had not “substantially implemented: SORNA by July 27, 2011 are required to forfeit 10 percent of their Byrne Justice Assistance Grant award annually beginning in fiscal year 2012. A tribe which fails to implement within a “reasonable” time will be forced to cede operations of its sex offender registry to the state in which the tribe resides.

After the passage of the Adam Walsh Child Protection and Public Safety Act of 2006, Texas was among a number of states that opted not to substantially implement the comprehensive federal law by the 2011 deadline. One reason was because of the overwhelming cost of coming into compliance. The 10% reduction in Byrne grant funds did not justify the projected cost of \$38,771,924 to come into compliance. In 2006, Texas received \$14,045,713 from the Byrne grant funds according to the Justice Policy Institute; 10% forfeiture would have been \$1,404,571. Additionally, Policymakers expressed concerns that compliant statutory changes in Texas would eliminate the juvenile court’s discretion regarding the registration decision and require other extensive amendments to Article 62 of the Code of Criminal Procedure. It was felt the system Texas had established for juveniles best served the needs of Texans.

In 2016, nearly ten years later, some of the uncertainties regarding state compliance have been alleviated by recent clarifications outlined in an August 2016 Federal Register Notice. Specifically, the notice made clear that laws in state jurisdictions that did not meet SORNA guidelines may still be considered to have substantially complied if state policies and practices promote public safety in a manner that does not undermine the overall SORNA objectives.

II. JUVENILE SEX OFFENDER REGISTRATION

A. Who Has to Register?

1. Texas Residents with In-State Adjudications

Art. 62.001 requires the registration for a juvenile who has an adjudication of delinquent conduct for or based on the following crimes as defined by the Texas Penal Code:

- a. §21.02 – continuous sexual abuse of young child or children; §21.09 – bestiality, §21.11 – indecency with a child, §22.011 – sexual assault, §22.021 – aggravated sexual assault, or §25.02 – prohibited sexual conduct;
- b. §43.05 – compelling prostitution, §43.25 – sexual performance by a child, §43.26 – possession or promotion of child pornography;
- b-1. §43.02 – prostitution if the offense is punishable under (c-1)(3);
- c. §20.04(a)(4) – aggravated kidnapping (if the actor committed the offense or engaged in the conduct with the intent to violate or abuse the victim sexually);
- d. §30.02 – burglary of a habitation (if the actor committed the offense or engaged in the conduct with intent to commit one of the following felonies: continuous sexual abuse of young child or children, indecency with a child, sexual assault, aggravated sexual assault, prohibited sexual conduct or aggravated kidnapping (if the kidnapping was committed with intent to violate or abuse the victim sexually);
- e. §20.02 – unlawful restraint, §20.03 – kidnapping, or §20.04 – aggravated kidnapping (if the victim was younger than 17 at the time of the offense);
- f. The second violation of §21.08 – indecent exposure;
- g. An attempt, conspiracy, or solicitation to commit an offense or engage in any of the conduct listed in a, b, c, d, e, k or l;
- h. A violation of the laws of another state, federal law, the laws of a foreign country or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed above, but not if the violation resulted in a deferred adjudication;
- i. The second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the

- offense of indecent exposure but not if the second violation results in a deferred adjudication;
- j. §33.021 – online sollicitation of a minor;
- k. §20A.02(a)(3), (4), (7), or (8) – trafficking of persons;
- l. §20A.03 – continuous trafficking of persons.

2. **2. Texas Residents with Out-of-State Adjudications**

If a juvenile is adjudicated under federal law, law of a foreign country or a sister state for an offense that contains elements that are substantially similar to the elements of a covered Texas offense, that person is required to register with the appropriate local law enforcement authority in Texas if he or she resides in Texas. DPS makes the determination whether an offense contains elements that are substantially similar to the elements of an offense under the laws of this state. Art. 62.003. An appeal of a determination made under this article shall be brought in a district court in Travis County.

3. **Out-of-State Residents Who Work or Attend School in Texas**

If a juvenile resides out of Texas but has an adjudication for an offense that is covered by Texas law (which might be a Texas offense or an out-of-state offense) and is working or attending school in Texas, he or she is required to register with the local law enforcement authority in the municipality or county in which the employment or school is located.

4. **Texas Residents Who Work or Attend School Out-of-State**

If the other state has a registration requirement for sex offenders, a person 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 DPS 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. Art. 62.051(i)

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

A pending appeal or pending pardon of an adjudication or conviction does not affect a duty to register as a sex offender. However, if the conviction or adjudication is set aside on appeal or if the person receives a pardon on the basis of subsequent proof of innocence, the duty to register is terminated.

C. Prerelease Notification

Art. 62.053 requires the appropriate officials to

notify a juvenile of his or her registration obligations and to fill in a registration form before he or she is released from TYC, from a secure local facility or placed on probation.

Art. 62.053 provides that before a person who will be subject to registration is due to be released from a penal institution, the Texas Department of Criminal Justice or the Texas Youth Commission shall determine the person's level of risk to the community using a sex offender screening tool and assign a numeric risk level of one, two, or three. Level one indicates that the person poses a low danger to the community and will not likely engage in criminal sexual conduct. Level two indicates that the person poses a moderate danger to the community and may continue to engage in criminal sexual conduct. Level three indicates that the person poses a serious danger to the community and will continue to engage in criminal sexual conduct.

Before releasing the person, an official of the penal institution shall inform the person that he has seven days after release to register with the local law enforcement authority in the municipality or county in which the person intends to reside. Further, not later than the 30th day after the date on which the person is released, the person must apply in person for the issuance of an original or renewal driver's license or personal identification certificate and a failure to apply results in the automatic revocation of any driver's license or personal identification certificate issued to the person.

The official will require the person to sign a written statement that the person was informed of the person's duties to register or, if the person refuses to sign the statement, certify that the person was so informed and obtain the address where the person expects to reside on the person's release and other registration information, including a photograph and complete set of fingerprints and complete the registration form for the person.

If a person who is subject to registration receives an order deferring adjudication, placing the person on community supervision or juvenile probation, or imposing only a fine, the court pronouncing the order or sentence shall make a determination of the person's numeric risk level, assign to the person a numeric risk level of one, two, or three, and ensure that the prerelease notification and registration requirements are conducted on the day of entering the order or sentencing. If a community supervision and corrections department representative is available in court at the time a court pronounces a sentence of deferred adjudication or community supervision, the representative shall immediately obtain the person's numeric risk level from the court and conduct the prerelease notification and registration requirements.

Not later than the eighth day after receiving a registration form, the local law enforcement authority

shall verify the age of the victim, the basis on which the person is subject to registration under this chapter, and the person's numeric risk level. The local law enforcement authority shall immediately provide notice to the superintendent of the public school district and to the administrator of any private primary or secondary school located in the public school district in which the person subject to registration intends to reside. On receipt of a notice, the superintendent shall release the information contained in the notice to appropriate school district personnel, including peace officers and security personnel, principals, nurses, and counselors.

Before a person who will be subject to registration is due to be released from a penal institution in this state, an official of the penal institution shall inform the person that: (1) if the person intends to reside in another state and to work or attend school in this state, the person must register within seven days with the local law enforcement authority in the municipality or county in which the person intends to work or attend school; (2) if the person intends to reside in this state and to work or attend school in another state and if the other state has a registration requirement for sex offenders, the person must register within 10 days with the law enforcement authority that is identified by the department as the authority designated by that state to receive registration information.

D. Procedural Requirements – Article 62.051

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 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 register not later than the seventh day after the person's arrival in the municipality or county. The information collected during registration includes:

(1) the person's full name, each alias, date of birth, sex, race, height, weight, eye color, hair color, social security number, drivers license number, shoe size, and home address;

(2) a recent color photograph or, if possible, an electronic digital image of the person and a complete set of the person's fingerprints;

(3) the type of offense the person was convicted of, the age of the victim, the date of conviction, and the punishment received;

(4) an indication as to whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;

(5) an indication of each license, as defined by Article 62.005(g), that is held or sought by the person;

(6) an indication as to whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state, and the name and address of that institution,

(7) online identifiers and phone numbers, including cell phone numbers,

(8) vehicle registration information including make, model, vehicle identification number, color, and license plate number, and

(9) any other information required by the department.

The registration form must contain a statement and description of any registration duties the person has or may have under this chapter.

A person subject to registration must report in person each year to verify the information in the registration form.

E. Change of Address - Art. 62.055

If a registrant intends to move, Art. 62.055 requires that he notify authorities of his intent to change address, regardless of whether the person intends to move to another state. Not later than the seventh day before the intended change, the person must report in person to the local law enforcement authority designated as the person's primary registration authority by the department and to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person and provide the authority and the officer with the person's anticipated move date and new address. If a person required to register changes address, the person shall, not later than the later of the seventh day after changing the address report in person to the local law enforcement authority in the municipality or county in which the person's new residence is located and provide the authority with proof of identity and proof of residence.

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

If a person does not move on or before the anticipated move date or does not move to the new address, the person shall report to the local law enforcement authority within seven days and weekly thereafter and provide an explanation to the authority regarding any changes in the anticipated move date and intended residence; and report to the juvenile probation officer, community supervision and corrections department officer, or parole officer supervising the person not less than weekly during any period in which the person has not moved to an

intended residence. These requirements would arguably include moving from one apartment to another in the same complex.

F. Department of Public Safety Maintains a Central Database of Information

Article 62.005 of the Code of Criminal Procedure mandates that the Department of Public Safety maintain a computerized central database containing the information required for registration and that this information is available to the public. This central database may include the numeric risk level assigned a person. All of the information contained in the database is public information, except for social security numbers, driver's license numbers, telephone numbers or information that would identify the victim.

Included in the public information is any photograph of the person that is available through the process for obtaining or renewing a personal identification certificate or driver's license. The department updates the photograph in the database and on the website annually. The effect of this is that the perpetrators of abuse continue to get older, but the victims do not. In other words, if a juvenile offender began registering at age twelve with a victim of age nine, when he is twenty-two, his victim is still age nine; which changes the perception by the public of his offense.

A local law enforcement authority also has the duty to release any of the public information to any person who requests the information.

G. School Notification

Article 62.054 provides that law enforcement authorities are required to give notice of a sex offender to school district officials, when certain circumstances are present. If: the victim was at the time of the offense a child younger than 17 years of age or a student enrolled in a public or private secondary school; or, the person subject to registration is a student enrolled in a public or private secondary school; or the basis on which the person is subject to registration is a conviction, a deferred adjudication, or an adjudication of delinquent conduct for sexual performance by a child or possession or promotion of child pornography.

H. Additional Public Notice – Risk Level Three

On receipt of notice that a person subject to registration is due to be released from a penal institution, has been placed on community supervision or juvenile probation, or intends to move to a new residence in this state and the person is assigned a numeric risk level of three, the department shall, not later than the seventh day after the date on which the person is released or the 10th day after the date on which the person moves, provide written notice mailed or delivered to at least each address, other than a post

office box, within a one-mile radius, in an area that has not been subdivided, or a three-block area, in an area that has been subdivided, of the place where the person intends to reside. The notice is in English and Spanish and includes any information that is public information.

Local law enforcement may provide notice to the public in any manner determined appropriate by the local law enforcement authority including publishing notice in a newspaper or other periodical or circular in circulation in the area where the person intends to reside (but not for juvenile offenders), holding a neighborhood meeting, posting notices in the area where the person intends to reside, distributing printed notices to area residents, or establishing a specialized local website. The local law enforcement authority may include in the notice only information that is public information.

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

A person required to register as a sex offender shall comply with a request for a DNA specimen made by a law enforcement agency under Sec. 411.1473, Government Code. At least one court of appeals has held that a respondent must submit a DNA specimen even though he was excused from sex offender registration. *See In re D.L.C.*, 124 S.W.3d 354 (Tex.App.—Ft. Worth 2003, no pet.). In a consolidated opinion, the Court of Appeals held that §54.045(a)(2) requiring a DNA sample applied to juveniles notwithstanding the fact that they had no duty to register.

J. How Long Must a Juvenile Register? - Art. 62.101

Under Art. 62.101(b), for a juvenile who was certified as an adult, the duty to register ends on the 10th anniversary of the date on which the person is released from a penal institution or discharges community supervision or the court dismisses the criminal proceedings against the person and discharges the person, whichever date is later.

Art. 62.101(c) provides that if the person's duty to register is based on an adjudication of delinquent conduct, the duty to register ends on the 10th anniversary of the date on which the disposition is made or the person completes the terms of the disposition, whichever date is later.

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

When a person is no longer required to register as a sex offender under Chapter 62, DPS shall remove all information about the person from the sex offender registry.

The duty to remove information under Subsection (a) arises if:

(1) the department has received notice from a local law enforcement authority under Subsection (c) or (d) that the person is no longer required to register or will no longer be required to renew registration and the department verifies the correctness of that information;

(2) the court having jurisdiction over the case for which registration is required requests removal and the department determines that the duty to register has expired; or

(3) the person or the person's representative requests removal and the department determines that the duty to register has expired.

It should be noted that DPS will not remove a person from the registry just because the duty to register has expired. The juvenile respondent must send or request the law enforcement authority to send notice that the duty to register has expired. Until that is done, the juvenile remains on the registry even though the information on the registry is not updated.

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

Art. 62.102 provides that failure to comply with any of the requirements of Chapter 62 constitutes a criminal offense and for juvenile offenders is a state jail felony.

III. SPECIAL JUVENILE RULES

A. School Notification and Removal

Upon arrest of any felony or certain misdemeanors (including indecent exposure), the arresting officer must contact the school within 24 hours or the next school day and notify the school of the arrest or referral. Art. 15.27 Code of Crim. Pro. What is noteworthy is typically a school will start its removal process from the regular classroom immediately, but not all arrests or referrals are prosecuted by the state. For example, a child whose case was refused for lack of prosecutorial merit or insufficient evidence or there was a finding of no probable cause by a grand jury will still be "prosecuted" by the school and may very well find him or herself in an alternative education program before the state even acts on the referral. Since the juvenile system is quasi-civil in nature, it is possible for a law enforcement agency to notify the school, without an arrest, refer the case to the local prosecutor and file it as an "at large" case. Then the prosecutor might file the case, have the juvenile served, have an announcement hearing and begin to prosecute the case. This places the juvenile in the predicament of having to attend alternative school without having the opportunity to litigate the underlying charges for a lengthy period of time.

B. Removal of Registered Sex Offenders from the Regular Classroom

If a child has to register as a sex offender and is also under any form of court supervision, then the child must be placed in the alternative education program for at least one semester. After the semester, a committee will decide and recommend to the board of trustees whether the student should continue in the alternative education program or be returned to the regular classroom. The board can override any recommendation of the committee to return a student to the regular classroom. If the board of trustees continues the child's placement in the alternative education program, the board then need only review this decision once before the beginning of each school year. The decision by the board of trustees is final and may not be appealed. Chapter 37, Education Code.

If a child does not have to register as a sex offender because the duty has expired; including the child receives an exemption or an early termination from registration, Chapter 37 of the Education Code does not apply. Interestingly, the vast majority of juveniles adjudicated for a sexual offense are receiving a deferral of the duty to register until treatment is completed, which is not specifically addressed by Chapter 37 of the Education Code. Since Chapter 37, Subchapter I. is titled Placement of Registered Sex Offenders, it could be argued that this only applies to those juveniles currently registered as sex offenders.

IV. EXEMPTIONS FROM REGISTRATION FOR CERTAIN JUVENILES

A. Unregistration – Article 62.351

Unregistration applies to the following juveniles:

a. Any juvenile who would, upon adjudication, be subject to the registration requirement who has a pending adjudication for a "reportable conviction or adjudication."

b. Any child in the Texas Youth Commission who has not been released on parole (and who has not been registered as a result of a prior probation or adjudication in the same case).

c. Any child who was assessed a determinate sentence and who has been transferred to the Texas Department of Criminal Justice - Institutional Division and who has not yet been released on parole.

1. Motion and Hearing

(a) During or after disposition of a case under Section 54.04, Family Code, for adjudication of an offense for which registration is required, the juvenile court on motion of the respondent shall conduct a hearing to determine whether the interests of the public require registration. 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 protection of the public would not be increased by registration of the Respondent or 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. 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 Sec. 54.04(b), Family Code.

(d) If a respondent, as part of a plea agreement, promises not to file a motion seeking an order exempting the respondent from registration, the court may not recognize the motion.

2. The Order

Pursuant to Art. 62.352:

(a) The court shall enter an order exempting a respondent from registration under this chapter if the court determines:

- (1) that the protection of the public would not be increased by registration of the respondent; or
- (2) that any potential increase in protection of the public resulting from registration of the respondent is clearly outweighed by the anticipated substantial harm to the respondent and the respondent's family that would result from registration.

(b) After a hearing, the juvenile court may enter an order:

- (1) deferring decision on requiring registration until the respondent has completed treatment for the respondent's sexual offense as a condition of probation or while committed to the Texas Youth Commission; or
- (2) requiring the respondent to register as a sex offender but providing the registration information is not public and is restricted to use by law enforcement and criminal justice agencies, the Council on Sex Offender Treatment and public or private institutions of higher education.

(c) If the court enters an order deferring its decision on requiring registration, the court retains discretion and jurisdiction to require, or exempt the respondent from, registration 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 unless a hearing 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 for nonpublic registration may not be posted on the internet or released to the public.

3. Tactics for the Practitioner

The unregistration motion must be **heard** prior to the duty to register which is within seven days of disposition or release from TYC or TDCJ. Therefore, the best way to handle this hearing is to file the motion prior to adjudication and set the hearing on the motion at the time of disposition.

The Court may rely on witness testimony, exhibits, representations of counsel and the contents of a social history report prepared by the juvenile probation department which may include psychological testing and examinations. All written material must be disclosed to the parties as provided by §54.04(b) of the Family Code. Therefore, reports or other written material should be shared with the prosecutor prior to the hearing. A check of the court file should be made to ensure copies of all the probation department's reports filed with the court and all of the exhibits the ADA intends to use have been obtained.

Obviously, the practitioner needs to know how things work in his or her court. A particular judge might order all sex offender registration issues be deferred until treatment is completed, placing the burden on the State to bring the case back to court. Another judge might order all juveniles to register on their 18th birthday, placing the burden on the juvenile to come back to court before the order becomes effective. Additionally, the court can defer the decision and set a hearing in the future to re-consider the decision. There are a number of variations as to what the court can do, so it is imperative the practitioner know what happens in a particular court.

Samples of written motions can be found at www.juvenilelaw.org and are also attached to this paper.

Another key consideration for the hearing is the use of expert witnesses. If the reports from the probation department include psychological testing, interviewing the psychologist to determine if he or she supports the motion is imperative. If not, then the practitioner should consider hiring his or her own. Most psychologists will support a determination to defer registration, which places the burden on the State

to come back to court after treatment if the ADA wants registration. It is hard to argue a child is beyond rehabilitation or that therapy does not work before therapy is even tried.

The state's witnesses may include the victim or the victim's family and the arresting officer.

B. Deregistration – Article 62.353

Deregistration applies to those juveniles already registered.

1. Motion, Hearing, and Order Concerning Person Already Registered

(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; or
- (2) an order that the registration become nonpublic.

(b) The person may file a motion 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.

(c) While the wording of the statute is confusing, it has been assumed by most juvenile judges that a respondent only gets to file one deregistration motion.

(d) To the extent feasible, the motion 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 juvenile.

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

- (1) grant the motion;
- (2) deny the motion;
- (3) make the respondent register but restrict the public access to the information.

2. Motion, Hearing, and Order Concerning Person Already Registered Because of Out-of-State Adjudication - Art. 62.354

A person required to register as a sex offender in this state because of an out-of-state adjudication of delinquent conduct may file in the juvenile court of the person's county of residence a petition under Art. 62.351 for an order exempting the person from registration.

If a person is already registered as a sex offender in this state because of an out-of-state adjudication of delinquent conduct, the person may file in the juvenile court of the person's county of residence a petition under Art. 62.353 for an order removing the person from sex offender registries in this state.

An order requiring removal of registration information applies only to registration information derived from registration in this state.

3. Tactics for the Practitioner

If the juvenile has already been registering, the

pressure is off with regard to timing. The motion should be set when the juvenile can demonstrate that he or she is leading a productive life. If your client is not working, going to school, attempting to accomplish one of those things, consider putting the motion off, especially if the underlying case is a determinate sentence case. For example if a juvenile is on parole for 20 years, he will still be registering for 10 years after the 20 year sentence is complete. If the horizon is 30 years, there is no reason to prematurely file a motion. The juvenile only has one opportunity to present this motion, the practitioner should make sure it is his best opportunity.

Again, the hearing is without a jury and the burden of persuasion is on the Respondent to show by a preponderance of the evidence that the protection of the public would not be increased by registration of the Respondent or 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.

The Court may rely on witness testimony, exhibits, representations of counsel and the contents of a social history report prepared by the juvenile probation department which may include psychological testing and examinations. All written material must be disclosed to the parties as provided by §54.04(b) of the Family Code.

4. Preparation When You Were not the Original Attorney

If you were not the original attorney on the case, contact the ADA and ask for a copy of the police report. Also talk with the ADA about anything they can remember about your client or the complainant. You can generally get a feel in this conversation whether asking for an agreement will work or not. If the ADA will not give you a copy of the police report, you can try the probation officer. Also, it will be in the client's TYC file, if any. Make sure the police report is provided to any expert witnesses.

If your client went to TYC, get a copy of the TYC file. The TYC file will have numerous psychological reports as well as your client's progress through any treatment programs, any medications, any behavioral problems, academic progress, the police report, sex offender risk assessments, etc. Generally a letter from TYC stating the juvenile finished a treatment program is sufficient for most ADA's without the need to call witnesses from TYC for that reason. Witnesses from TYC may or may not be beneficial. Regardless, they should be contacted and interviewed because it is likely the ADA will be doing so.

5. The Written Motion

Numerous studies have been done showing that the recidivism rates for juveniles is quite low. TYC has published statistics showing juvenile offenders who received sex offender therapy while at TYC had a zero percent rate of recidivism for sexual offenses,

tracking five years after release from TYC. Another study shows that 84% of juveniles do not re-offend sexually. *Federal Probation* 70, no. 3 (December 2006). Juveniles who receive only three months of cognitive behavior treatment in conjunction with family treatment have a 2% re-offense rate. Dr. Carmen Petzold, "Mandatory Registration for Juveniles Convicted of a Sexual Offense and Increased Risk of Recidivism," State Bar of Texas Juvenile Section, Robert O. Dawson Juvenile Law Institute, 22nd Annual Juvenile Law Conference, February 18-21, 2009. A 2006 retrospective study in Texas of 300 males under age 18 at the time of their first sex offense found that only 4.3% were rearrested as an adult for another sex offense. Donna M. Vandiver, "A Prospective Analysis of Juvenile Male Sex Offenders: Characteristics and Recidivism Rates as Adults," *Journal of Interpersonal Violence* 21, no.5 (May 2006): 673-688. According to the National Center on Sexual Behavior of Youth, youth sex offenses are not intended to be sexual. Youth do not eroticize aggression and are not aroused by child sex stimuli. Mental health professionals do not deem this behavior as predatory. J.A. Hunter, D.W. Goodwin, and J.V. Becker, "The Relationship between Phallometrically measured Deviant Sexual Arousal and Clinical Characteristics in Juvenile Sexual Offenders," *Behavioral Research and Therapy* 32 (1994): 533-538; J.V. Becker, J.A. Hunter, R.M. Stein, and M.S. Kaplan, "Factors Associated with Erection in Adolescent Sex Offenders," *Journal of Psychopathology & Behavioral Assessment* 11 (1989): 353-363; American Psychiatric Association, *Diagnostic and statistical manual of mental disorders* (4th ed.)(Washington, D.C.: American Psychiatric Association, 1994). These studies can be referenced in your Motion with the studies provided to the prosecutor and the court as learned treatises or the studies can be provided to the expert witness for discussion, or both.

The most difficult part of preparing a motion is determining which agencies and individuals have purchased or acquired the juvenile's sex offender registration information. If the motion is granted the clerk of the court shall send by certified mail a copy of the order to the Department of Public Safety, each local law enforcement authority that has information "and to each public or private agency or organization that the Respondent has proved to the juvenile court has information about the person..." The Crime Records Service of the Texas Department of Public Safety provides public records to customers on request. It also keeps a database of the list of customers who have received the public records. This information includes the name and address of the customer as well as the date the customer received the database information. The Texas Department of Public Safety website is www.txdps.state.tx.us. If the information is unavailable online, the Sex Offender Registration Desk

can provide the information over the phone. The contact number is 512-424-2800. The code provides that the clerk of court can charge \$20.00 per agency. Art. 62.353(f). Therefore, it is prudent to verify the accuracy of the data supplied by DPS prior to filing the motion.

6. The Expert Witness

The referral question for the expert/psychologist: Is your client a low risk for re-offending? That is the question the Judge will want answered by the expert. The expert should use a variety of assessment techniques to arrive at an answer to the referral question. The assessment techniques may include: clinical interview, WAIS-III, MMPI-2, projective testing, Sexual Projective Card Set, Sexual History Questionnaire, Juvenile Sex Offender Assessment Protocol-II. All assessment techniques and instruments should be appropriate for the juvenile offender. A number of adult assessment tools will give inaccurate results when used on juveniles. The expert should assess how the respondent has incorporated what he learned in the sex offender therapy into his daily living skills. In other words how has the respondent responded to treatment over time.

The expert should have access to all of the records including the police report, TYC records, juvenile probation records, previous psychological reports. One of the first questions the ADA will ask is whether the expert is aware of the crime your client committed. Without knowing that, how can the expert opine whether your client is a low risk to re-offend? The expert's report should have a conclusion answering definitively the referral question.

If more than one expert is employed, each should have something valuable to contribute and all of the conclusions should be in agreement. For example, the juvenile department psychologist could testify that the Respondent was a low risk of re-offending at the time of the adjudication and disposition and completed the sex offender program. Your private expert may testify that the Respondent has incorporated what he learned in the program into his daily living and has continued to be a low risk of re-offending. The probation or parole officer might testify that your client has followed all rules of release and passed all maintenance polygraphs. The parole or probation officer may also testify as to the difficulty your client has had obtaining employment, housing, etc. These are all critical factors for the judge to consider since *harm to the Respondent* is part of the balancing test.

7. Other Witnesses

Family members can testify as to the harm to Respondent and Respondent's family. Therefore the testimony is relevant.

The State may call the victim and the victim's family. The harm to the victim or victim's family is not relevant to the hearing, but a judge is likely to listen to the testimony. To minimize this potentially

harmful testimony, make the point that the victim and the victim's family have not had contact with the respondent for years, they are not aware of how he or she has changed, how productive he or she has become in society, etc. If you know they are going to be there, think about calling them as your first witnesses. Make your point that their testimony is remote in time and not relevant and then pass the witness. You may not keep out damaging testimony, but you can take the wind out of the ADA's sails. Make the same argument about remoteness with any psychological expert the State may have.

Take time to prepare your client for testifying. This includes determining whether he or she has been active on any internet networking sites. If so, consider having your client remove him or herself from these sites. There will be nothing favorable to your case on these networking sites and they could be very damaging. At least one district judge has held the information on a social networking site is not hearsay because it is the respondent's statement about himself (or in other words, statement against interest).

Factors that the respondent is not a threat to the public may include his age, no threats or violence used, no use of a weapon, successful completion of counseling programs, type of touching or sex act involved, plans for the future, family support network, ages of the respondent and the victim.

In the 18 years since Texas enacted a sex offender registry, there is not a single study that supports the notion that the public is any safer or that information on the registry serves to protect the public. "No evidence suggests that registries and notification systems for people convicted of sex offenses are effective ways of improving public safety or deterring sexual violence. For youth, registries and notification systems cut youth off from beneficial social networks, creating social stigma and isolation, increasing the risk of suicide, alienating a youth from school and community, and raising barriers to successful participation in society." Franklin E. Zimring and others, "Sexual Delinquency in Racine: Does Early Sex Offending Predict Later Sex Offending in Youth and Young Adulthood?" *Criminology and Public Policy* 6, no.3 (2007): 507-534; Sarah Tofte, *No Easy Answers* (New York: Human Rights Watch, 2007).

8. The Order

Prepare copies of all alternative orders and bring them to the hearing. Include a list of all the agencies and organizations to receive the order. The agencies or organizations have 30 days to delete your client from their records. Be prepared to pay for the cost of sending the orders to all agencies otherwise the clerks will not send them out. Provide the client with a certified copy of the order and instruct him to keep it with him. He may need to present the order to his probation or parole officer or law enforcement until the clerks have sent copies of the orders to local law

enforcement and DPS. A periodic check of the file is also prudent since the information on the agencies and organizations is subject to change. Orders may be returned to the clerk's office as undelivered.

9. Effect of Certain Orders

Article 62.356 provides that a person who has an adjudication of delinquent conduct that would otherwise be reportable does not have a reportable adjudication of delinquent conduct if the juvenile court enters an order exempting the person from the registration requirements.

If the juvenile court enters an order exempting a person from registration, the respondent may not be required to register in this or any other state for the offense for which registration was exempted.

10. Appealing the Order - Art. 62.357

Notwithstanding Section 56.01, Family Code, on entry by a juvenile court of an order under Art. 62.352(a) exempting a respondent from registration, the prosecuting attorney may appeal that order by giving notice of appeal within the time required under Rule 26.2(b), Texas Rules of Appellate Procedure. The appeal is civil and the standard of review in the appellate court is whether the juvenile court committed procedural error or abused its discretion in exempting the respondent from registration. The appeal is limited to review of the order exempting the respondent from registration and may not include any other issues in the case.

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

V. PREVENTING REGISTRATION THROUGH PLEA NEGOTIATION

A. Negotiations Prior to the Case Being Filed

In cases where the respondent and victim are family members or known to each other, you may be able to request that the prosecutor hold the case until the child can engage in treatment and counseling. If the family can appropriately handle the child's behaviors and a therapist can confirm that the situation is being handled, there is less need for formal juvenile court intervention.

Equally effective is to propose a plea to an equally serious offense that does not require sex offender registration; with a condition of probation that requires successful completion of sex offender therapy. Some examples include: assault, aggravated assault, injury to a child, endangering a child.

A juvenile disposition that does not involve an adjudication does not trigger the registration requirements. Therefore, deferred prosecution, which

does not involve an adjudication would sidestep the sex offender registration requirements.

B. Plea Negotiations Regarding a Hearing

The prosecuting attorney may waive the state's right to a hearing under Article 62.353 and agree that registration is not required. A waiver must state whether the waiver is entered under a plea agreement or not.

If the waiver is entered under a plea agreement, the court shall either accept the plea agreement or inform the respondent that the court believes a hearing is required and give the respondent the opportunity to withdraw the plea of true.

If the waiver is entered other than under a plea agreement, the court, without a hearing, shall enter an order exempting the respondent from registration.

The prosecuting attorney may also agree to defer registration and allow the child to complete sex offender therapy. While deferral is a short-term victory, it is not clear how, when, and why the State could seek to move to revoke the deferral.

Prior to entering into a plea bargain, it is imperative the practitioner understand the court's usual disposition in these types of cases. For example, if you know the judge almost always defers the decision, then a plea agreement to that effect is not really a bargain. In other words, the State has really offered nothing to avoid a trial.

APPENDIX A - MOTIONS AND ORDERS

CAUSE NO. JD-_____

IN THE MATTER § **IN THE ____ DISTRICT COURT**
OF §
_____ § **_____ COUNTY, TEXAS**
_____ §
_____ § **SITTING AS A JUVENILE COURT**

MOTION TO EXCUSE OR DEFER SEX OFFENDER REGISTRATION
OR IN THE ALTERNATIVE TO MAKE IT NONPUBLIC
(UNREGISTRATION)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Respondent in the above styled and numbered cause, who files this Motion to Excuse or Defer Sex Offender Registration, or in the alternative, make his registration requirements “non-public” as provided in Texas Code of Criminal Procedure Article 62.351, and in support thereof would show the court as follows:

I.

Respondent was adjudicated delinquent for the offense of _____ which is covered under the sex offender registration laws by Article 62.001 of the Texas Code of Criminal Procedure.

II.

Respondent has not registered as a sex offender for said adjudication of delinquent conduct.

III.

Respondent is a suitable candidate for an order of this court excusing registration as a sex offender for the following reasons:

- (1) The protection of the public would not be increased by registration of the respondent as a sex offender,
or
- (2) 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 as a sex offender.

IV.

Respondent moves this Court to take judicial notice of or consider as a learned treatise the pamphlet entitled “Juveniles Who Have Sexually Offended, A Review of the Professional Literature”, published by the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, which

8736, www.puborder@ncjrs.org. This paragraph is intended to comply with Article 62.351(b) of the Texas Code of Criminal Procedure in that it puts all parties on notice of written matter which Respondent will request that the Court consider.

WHEREFORE, PREMISES CONSIDERED, Respondent requests a hearing on this motion and prays that this court excuse sex offender registration or, in the alternative, make his registration requirements “non-public” as authorized by Article 62.353 of the Texas Code of Criminal Procedure, and for such other relief requested herein or authorized by law.

Respectfully submitted,

CAUSE NO. JD- _____

IN THE MATTER	§	IN THE ____ DISTRICT COURT
	§	
OF	§	_____ COUNTY, TEXAS
	§	
_____	§	SITTING AS A JUVENILE COURT

ORDER EXCUSING SEX OFFENDER REGISTRATION
(UNREGISTRATION)

On this the ____ day of _____, 200__, in this court sitting as a Juvenile Court, came on to be heard Respondent’s Motion requesting that sex offender registration be excused or deferred or made nonpublic.

After due notice had been served on all parties, came and appeared _____, Respondent and his/her Attorney and parent as well as a representative of the District Attorney’s office or waiver of appearance is on file. All parties announced ready; and thereupon the Court, after hearing the pleadings of all parties and hearing the evidence and argument of counsel, makes the following finding:

- 1) The protection of the public would not be increased by registration of the Respondent under Chapter 62 of the Texas Code of Criminal Procedure; or
- 2) Any potential increase in protection of the public resulting from registration is clearly outweighed by any anticipated substantial harm to the Respondent and the Respondent’s family that would result from registration under Chapter 62 of the Texas Code of Criminal Procedure.

3) The following information identifies the Respondent in this cause

NAME _____
SEX _____
RACE _____
DATE OF BIRTH _____
DRIVERS LICENSE NUMBER _____
PERSONAL IDENTIFICATION NUMBER _____
SOCIAL SECURITY NUMBER _____
TRN _____

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondent shall be **excused** from all sex offender registration that would otherwise be required under Chapter 62 of the Texas Code of Criminal Procedure as a result of any adjudication in this cause.

IT IS FURTHER ORDERED that the District Clerk send a certified copy of this Order to:

1. Sex Offender Registration, Texas Department of Public Safety-MS 0231, P.O. Box 4143, Austin, Texas 78765-4143, and
2. *(Local Law Enforcement Authority)*

SIGNED and **ENTERED** this the _____ day of _____, _____.

PRESIDING JUDGE

CAUSE NO. JD-_____

IN THE MATTER
OF

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IN THE ____ DISTRICT COURT
_____ COUNTY, TEXAS
SITTING AS A JUVENILE COURT

ORDER DEFERRING SEX OFFENDER REGISTRATION

On this the ____ day of _____, 200__, in this court sitting as a Juvenile Court, came on to be heard Respondent’s Motion requesting that sex offender registration be excused, made nonpublic or deferred.

After due notice had been served on all parties, came and appeared _____, Respondent and his/her Attorney and parent as well as a representative of the District Attorney’s office or waiver of appearance is on file. All parties announced ready; and thereupon the Court, after hearing the pleadings of all parties and hearing the evidence and arguments of counsel, makes the following findings:

- 1) The interests of the public require that a decision on the issue of whether Respondent should be required to register as a sex offender pursuant to Chapter 62 of the Texas Code of Criminal Procedure be **DEFERRED** until Respondent has completed a sex offender treatment program as a condition of probation or while committed to the Texas Youth Commission.
- 2) The following information identifies the Respondent in this cause

NAME _____
SEX _____
RACE _____
DATE OF BIRTH _____
DRIVERS LICENSE NUMBER _____
PERSONAL IDENTIFICATION NUMBER _____
SOCIAL SECURITY NUMBER _____
TRN _____

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondent shall not register as a sex offender pursuant to Chapter 62 of the Texas Code of Criminal Procedure (**OPTIONAL: until Respondent’s 18th birthday, or**) until further Order of this court, (**OPTIONAL: whichever event occurs first.**)

IT IS FURTHER ORDERED that the District Clerk send a certified copy of this Order to:

- 1. Vincent Castilleja, Sex Offender Registration, Texas Department of Public Safety-MS 0231, P.O. Box 4143, Austin, Texas 78765-4143, and
- 2. Sex Offender Registration, Melissa Headrick, TJJD, P.O. Box 12757, Austin, TX 78711, and
- 3. **(Local Law Enforcement Authority)**

This Court retains discretion to require or to excuse registration at any time during the treatment program or on its successful or unsuccessful completion.

SIGNED and **ENTERED** this the ____ day of _____, _____.

PRESIDING JUDGE

CAUSE NO. JD-_____

IN THE MATTER
OF

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IN THE ____ DISTRICT COURT
_____ COUNTY, TEXAS
SITTING AS A JUVENILE COURT

ORDER EXCUSING PUBLIC REGISTRATION
(NONPUBLIC REGISTRATION)

On this the ____ day of _____, 200__, in this court sitting as a Juvenile Court, came on to be heard Respondent’s Motion requesting that sex offender registration be excused, made nonpublic or deferred.

After due notice had been served on all parties, came and appeared _____, Respondent and his/her Attorney and parent as well as a representative of the District Attorney’s office or waiver of appearance is on file. All parties announced ready; and thereupon the Court, after hearing the pleadings of all parties and hearing the evidence and argument of counsel, makes the following finding:

- 4) The protection of the public would not be increased by public registration of the Respondent under Chapter 62 of the Texas Code of Criminal Procedure; or
- 5) Any potential increase in protection of the public resulting from public registration is clearly outweighed by any anticipated substantial harm to the Respondent and the Respondent’s family that would result from public registration under Chapter 62 of the Texas Code of Criminal Procedure.
- 6) The following information identifies the Respondent in this cause

NAME _____
SEX _____
RACE _____
DATE OF BIRTH _____
DRIVERS LICENSE NUMBER _____
PERSONAL IDENTIFICATION NUMBER _____
SOCIAL SECURITY NUMBER _____
TRN _____

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondent **shall** register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure; however, said registration shall be made **nonpublic**. The registration information of the Respondent is not public information and is restricted to use by law enforcement and criminal justice agencies only. The information may not be posted on the Internet or released to the public.

Nothing in this order shall be construed as to allow deletion or destruction of information kept by schools pursuant to Article 15.27 Texas Code of Criminal Procedure.

IT IS FURTHER ORDERED that the District Clerk send a certified copy of this Order to:

- 1. Sex Offender Registration, Texas Department of Public Safety-MSO 0231, P.O. Box 4143, Austin, Texas

2. Sex Offender Registration, Melissa Headrick, TJJD, P.O. Box 12757, Austin, TX 78711, and
2. **(Local Law Enforcement Authority)**

SIGNED and **ENTERED** this the _____ day of _____, _____.

PRESIDING JUDGE

CAUSE NO. JD-_____

IN THE MATTER
OF

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IN THE ____ DISTRICT COURT
_____ COUNTY, TEXAS
SITTING AS A JUVENILE COURT

MOTION TO EXCUSE SEX OFFENDER REGISTRATION RETROACTIVELY
(DEREGISTRATION)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Respondent in the above styled and numbered cause, who files this Motion to Excuse Sex Offender Registration Retroactively, or in the alternative, make his registration requirements “non-public” as provided in Texas Code of Criminal Procedure Article 62.353, and in support thereof would show the court as follows:

I.

Respondent’s date of birth is _____ and he is currently ___years of age. Respondent was adjudicated delinquent on the ___ day of _____, ___ for the offense of _____ which is covered under the sex offender registration laws by Article 62.001 of the Texas Code of Criminal Procedure.

II.

Respondent has registered as a sex offender for said adjudication of delinquent conduct as required by law.

III.

A previous motion has not been filed under Article 62.353(c) of the Texas Code of Criminal Procedure.

IV.

Those public and private agencies and organizations that possess sex offender registration information about this case are listed in Exhibit “A” and incorporated herein for all intents and purposes.

V.

Respondent is a suitable candidate for an order of this court excusing registration as a sex offender for the following reasons:

(3) The protection of the public would not be increased by registration of the respondent as a sex offender,

or

(4) 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 as a sex offender.

VI.

Respondent moves this Court to take judicial notice of or consider as a learned treatise the pamphlet entitled "Juveniles Who Have Sexually Offended, A Review of the Professional Literature", published by the U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, which may be obtained through the Juvenile Justice Clearinghouse, P.O. Box 6000, Rockville, MD 20849-6000, 800/638-8736, www.puborder@ncjrs.org. This paragraph is intended to comply with Article 62.351(b) of the Texas Code of Criminal Procedure in that it puts all parties on notice of written matter which Respondent will request that the Court consider.

WHEREFORE, PREMISES CONSIDERED, Respondent requests a hearing on this motion and prays that this court excuse sex offender registration or, in the alternative, make his registration requirements "non-public" as authorized by Article 62.353 of the Texas Code of Criminal Procedure, and for such other relief requested herein or authorized by law.

Respectfully submitted,

CAUSE NO. JD-_____

IN THE MATTER
OF

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§

IN THE ____ DISTRICT COURT
_____ COUNTY, TEXAS
SITTING AS A JUVENILE COURT

ORDER EXCUSING SEX OFFENDER REGISTRATION
(DEREGISTRATION)

On this the ____ day of _____, 200_, in this court sitting as a Juvenile Court, came on to be heard Respondent’s Motion requesting that sex offender registration be excused or made nonpublic.

After due notice had been served on all parties, came and appeared Respondent, his Attorney, as well as a representative of the District Attorney’s office. All parties announced ready. After hearing the evidence presented by both parties, the Court makes the following findings:

- 1) Respondent has registered as a sex offender for an adjudication of delinquent conduct, and
- 2) A previous motion under Article 62.353(c) of the Texas Code of Criminal Procedure has not been filed concerning this case, and
- 3) The protection of the public would not be increased by registration of the Respondent under Chapter 62 of the Texas Code of Criminal Procedure, or
- 4) Any potential increase in protection of the public resulting from registration is clearly outweighed by any anticipated substantial harm to the Respondent and the Respondent’s family that would result from registration under Chapter 62 of the Texas Code of Criminal Procedure.
- 5) The following information identifies the Respondent in this cause:

NAME _____
SEX _____
RACE _____
DATE OF BIRTH _____
DRIVERS LICENSE NUMBER _____
PERSONAL IDENTIFICATION NUMBER _____
SOCIAL SECURITY NUMBER _____
TRN _____

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondent shall be **excused** from all registration that would otherwise be required under Chapter 62 of the Texas Code of Criminal Procedure as a result of any adjudication in this cause.

IT IS FURTHER ORDERED that the Clerk of this Court send a copy of this order to each of the agencies and organizations listed in Exhibit “A”, attached hereto and incorporated herein for all intents and purposes.

IT IS FURTHER ORDERED that each of the agencies and organizations listed in Exhibit “A” shall conform its records to this order by **deleting all sex offender registration information**, on or before the 30th day after the date of the entry of this order. **Failure to comply with this order during the above-stated time period automatically bars a private agency or organization from obtaining sex offender registration information from any state, county, or local governmental entity in this state in the future.**

IT IS FURTHER ORDERED that the District Clerk send a certified copy of this Order to: 1. Vincent Castilleja, Sex Offender Registration, Texas Department of Public Safety- MSC 0231, P.O. Box 4143, Austin, Texas 78765-4143, and

2. Sex Offender Registration, Melissa Headrick, TJJJD, P.O. Box 12757, Austin, TX 78711, and

3. *[local law enforcement agency for your Respondent.]*

Nothing in this order shall be construed as to allow deletion or destruction of the criminal record of Respondent, which is kept by law enforcement agencies for purposes other than sex offender registration.

Nothing in this order shall be construed as to allow deletion or destruction of information kept by schools pursuant to Article 15.27 Texas Code of Criminal Procedure.

SIGNED and **ENTERED** this the ____ day of _____, 200_.

PRESIDING JUDGE

CAUSE NO. JD-_____

IN THE MATTER

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IN THE ____ DISTRICT COURT

OF

_____ COUNTY, TEXAS

SITTING AS A JUVENILE COURT

SEX OFFENDER REGISTRATION ORDER
(RETROACTIVE NONPUBLIC REGISTRATION)

On this the ____ day of _____, _____, in this court sitting as a Juvenile Court, came on to be heard Respondent’s Motion requesting that sex offender registration be excused or made nonpublic.

After due notice had been served on all parties, came and appeared _____, Respondent and his/her Attorney and parent as well as a representative of the District Attorney’s office or waiver of appearance is on file. All parties announced ready; and thereupon the Court, after hearing the pleadings of all parties and hearing the evidence and argument of counsel, makes the following finding:

- 1) Respondent has registered as a sex offender for an adjudication of delinquent conduct, and
- 2) A previous motion under Article 62.353 of the Texas Code of Criminal Procedure has not been filed concerning this case, and
- 3) The protection of the public would not be increased by public registration of the Respondent under Chapter 62 of the Texas Code of Criminal Procedure, or
- 4) Any potential increase in protection of the public resulting from public registration is clearly outweighed by any anticipated substantial harm to the Respondent and the Respondent’s family that would result from public registration under Chapter 62 of the Texas Code of Criminal Procedure.
- 5) The following information identifies the Respondent in this cause

NAME _____
SEX _____
RACE _____
DATE OF BIRTH _____
DRIVERS LICENSE NUMBER _____
PERSONAL IDENTIFICATION NUMBER _____
SOCIAL SECURITY NUMBER _____
TRN _____

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Respondent shall continue to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure; however, said registration shall

be made **nonpublic**. Respondent's sex offender registration information is not public information and is restricted to use by law enforcement and criminal justice agencies. Said information may not be posted on the Internet or released to the public.

IT IS FURTHER ORDERED that the Clerk of this Court send a copy of this order to each of the agencies and organizations listed in Exhibit "A", attached hereto and incorporated herein for all intents and purposes.

IT IS FURTHER ORDERED that each of the agencies and organizations listed in Exhibit "A" shall conform its records to this order by **changing sex offender registration information ONLY**, to nonpublic on or before the 30th day after the date of the entry of this order. Each **private** agency is **ORDERED** to delete or destroy all sex offender registration information regarding the respondent on or before the 30th day after the date of the entry of this order.

IT IS FURTHER ORDERED that the District Clerk send a certified copy of this Order to:

1. Sex Offender Registration, Texas Department of Public Safety-MS 0231, P.O. Box 4143, Austin, Texas 78765-4143, and
2. Sex Offender Registration, Melissa Headrick, TJJD, P.O. Box 12757, Austin, TX 78711, and
3. **(Local Law Enforcement Authority)**

Failure to comply with this order during the above-stated time period automatically bars a private agency or organization from obtaining sex offender registration information from any state, county, or local governmental entity in this state in the future.

Nothing in this order shall be construed as to allow deletion or destruction of information kept by schools pursuant to Article 15.27 Texas Code of Criminal Procedure.

SIGNED and **ENTERED** this the _____ day of _____, _____.

PRESIDING JUDGE

TEXAS JUVENILE SEX OFFENDER RISK ASSESSMENT INSTRUMENT-2

Revised Yes / No

PART I – GENERAL INFORMATION					
Date of Assessment:	Offender Name:	Gender:	SID #:	PID #:	Referral #:
Date of Birth:	Primary Reportable Sex Offense:	Penal Code Citation:		Date of Primary Reportable Sex Offense:	
Evaluator's Name:	Evaluator's Phone Number:	Headquarter County:		Disposition Date:	
Placement: <input type="checkbox"/> None <input type="checkbox"/> Non-Secure <input type="checkbox"/> Secure			Primary Disposition: <input type="checkbox"/> Probation <input type="checkbox"/> Determinate Sentence Probation <input type="checkbox"/> TYC		

PART II - VARIABLES

	Score	Notes / Comments
1. AGE AT FIRST REFERRAL:	[]	
10 Years of Age2		
11 – 14 Years of Age1		
15 Years of Age or Older0		
2. PRIOR REFERRALS FOR A REPORTABLE SEX OFFENSE:	[]	
2 or more prior referrals for sex offense2		
1 prior referral for a sex offense1		
No prior referrals for a sex offense0		
3. PRIOR ADJUDICATIONS FOR A REPORTABLE SEX OFFENSE:	[]	
1 or more prior adjudications for a sex offense1		
No prior adjudications for a sex offense0		
4. PRIOR REFERRALS FOR A FELONY OFFENSE:	[]	
2 or more prior referrals for a felony offense2		
1 prior referral for a felony offense1		
No prior referrals for a felony offenses0		
5. PRIOR ADJUDICATIONS FOR A FELONY OFFENSE:	[]	
2 or more prior adjudications for a felony offense2		
1 prior adjudication for a felony offense1		
No prior adjudications for a felony offense0		
6. PRIOR PLACEMENTS:	[]	
1 or more prior placements1		
No prior placements0		
7. CURRENT QUALIFYING DSM DIAGNOSIS:	[]	
Present1		
Absent0		

REGISTRATION STATUS

Non-Public Registration Full Registration

Override: Yes No

Override Reason: _____

Total Score

Assigned Risk Level

Total Score	Risk Level
0 – 1 Low Range	1
2 – 3 Moderate Range	2
4 – 11 High Range	3

Signature of Judge or TDCJ Risk Assessment Committee Member

Date

Yes No

Check "Yes" only if a judge, judicial designee or TDCJ Risk Assessment Committee Member has signed the TJSORAI-2 form. Check "No" if the TJSORAI-2 form has not been signed.

**PART III
SUPPLEMENTAL INFORMATION**

1. Total Number of Sex Offenses Disposed in this Event:

2. Total Number of Sex Offense Victims in this Disposition Event:

3. CURRENT SEX OFFENSE(S) VICTIM INFORMATION *(List information for each sex offense victim identified in this event.)*

	Age of Victim	Gender of Victim	Does Victim live with Offender? <i>(Select Yes or No)</i>	Relationship of Victim to Offender <i>(Select applicable relationship)</i>			Bodily Injury Sustained by Victim <i>(Select applicable injury type)</i>		
				Relative	Stranger	Acquaintance	None	Moderate	Severe
Victim 1		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim 2		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim 3		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim 4		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim 5		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4. TOTAL NUMBER OF PRIOR SEX OFFENSE VICTIM(S) - *List the offender's total number of prior sex offense victims. Include all victims the offender has disclosed for which they have been referred and for which they have been adjudicated. (Count each victim once)*

Total Number of Prior Sex Offense Victims: _____

5. PRIOR SEX OFFENSE(S) VICTIM INFORMATION: *Provide information on prior victims identified above.*

	Age of Victim	Gender of Victim	Does Victim live with Offender? <i>(Select Yes or No)</i>	Relationship of Victim to Offender <i>(Select applicable relationship)</i>			Bodily Injury Sustained by Victim <i>(Select applicable injury type)</i>		
				Relative	Stranger	Acquaintance	None	Moderate	Severe
Victim 1		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim 2		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim 3		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim 4		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Victim 5		<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

6. HISTORY OF ABUSE: *Indicate if the offender has ever been a confirmed or suspected victim of abuse:*

Select all that apply

Physical Emotional Sexual None

7. SUBSTANCE USE: *Indicate if the offender has a drug or alcohol problem.*

Yes No

8. DSM DIAGNOSIS: *Indicate the offender's primary mental health diagnosis, if any.*

Enter Primary Diagnosis Below

9. SCHOOL BEHAVIOR: *Indicate if the offender has experienced the following for behavior not directly related to a sex offense :*

Select Yes or No for Each

A. Suspended or expelled from school	<input type="checkbox"/> Yes <input type="checkbox"/> No
B. Failed a grade in school	<input type="checkbox"/> Yes <input type="checkbox"/> No
C. Placement in an Alternative School setting (AEP, DAEP or JJAEP)	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. WEAPON USE: <i>Did the offender use a weapon other than a body part in the current sex offense?</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Texas Juvenile Sex Offender Risk Assessment Instrument–2

INSTRUCTIONS

The Texas Juvenile Sex Offender Risk Assessment Instrument-2 (TJSORAI-2) replaces the Texas Juvenile Risk Assessment Instrument (TJSORAI). It is recommended that all staff completing the TJSORAI-2 receive training from TJJJ staff on the TJSORAI-2 prior to completing the form and/or entering information into the web-based database.

The TJSORAI-2 must be completed for all juveniles adjudicated for a reportable sex offense and required to register as a sex offender. Qualifying dispositions include probation, determinate sentence probation and TJJJ commitment (indeterminate and determinate).

The TJSORAI-2 should be completed for each disposition event involving the adjudication for one or more reportable sex offenses. A disposition event is defined as one or more offenses disposed of on a single day. One TJSORAI-2 should be completed for a juvenile adjudicated for multiple reportable sex offenses in a single disposition event. These offenses may be the result of single or multiple referrals. If, however, a juvenile is adjudicated for multiple reportable sex offenses in multiple disposition events, a TJSORAI-2 form must be completed for each event.

The TJSORAI-2 contains three sections – Part I: General Information; Part II: Risk Variables; and Part III: Supplemental Information. All sections should be completed for all juveniles adjudicated for a reportable sex offense and required to register. The signature of the judge, judicial designee or a Risk Assessment Committee Member is required.

The TJSORAI-2 is to be completed and submitted electronically to TJJJ. The TJSORAI-2 form can be found on the TJJJ website (www.tjjd.texas.gov). The database may be accessed at <https://www.tjjd.texas.gov/TJSORAI>. A password is required for access. Questions about the form and requests for passwords can be addressed to Katrena Plummer katrena.plummer@tjjd.texas.gov or by calling 512-490-7248.

PART I: IDENTIFYING INFORMATION

Revised: Yes/No	If this is the initial form completed for this disposition event, indicate “No”. If data for this disposition event has been previously submitted to TJPC on the TJSORAI database and this form contains corrected, revised or updated information to that previously submitted form, select “Yes”. A revised form should be submitted if information on the original form was incorrect or incomplete. Select “yes” and enter all the information on the TJSORAI-2 form.
Date of Assessment:	Enter month, day and year the assessment was completed. (mm/dd/yy)
Offender First Name:	Enter juvenile’s first name. Make sure entry matches name entered in other department/court records.
Offender Middle Name:	Enter juvenile’s middle name. Make sure entry matches name entered in other department/court records.
Offender Last Name:	Enter juvenile’s last name. Make sure entry matches name entered in other department/court records.
Gender:	Enter juvenile’s gender.
SID Number:	Enter juvenile’s state identification number issued by the Texas Department of Public Safety. This number will be eight digits in length.
PID Number:	Enter juvenile’s personal identification number issued by the TJPC Caseworker or County based system.
Referral Number:	Enter the referral number that coincides with the juvenile’s primary sex offense.
Date of Birth:	Enter month, day and year of offender’s birth. (mm/dd/yy)
Primary Reportable Sex	Enter primary reportable sex offense.

Offense:	
Penal Code Citation:	Enter the Texas Penal Code Citation for the primary sex offense. (In the electronic form this will fill automatically with the selection of primary offense)
Date of Primary Sex Offense:	Enter the month, day and year the primary reportable sex offense occurred. (mm/dd/yy)
Evaluator's Name:	Enter name of person completing the TJSORAI-2.
Evaluator's Phone Number:	Enter the phone number of the Evaluator. Include the area code and extension number, if applicable. (000-000-0000)
Headquarter County:	Enter the headquarter county in which the youth was referred.
Disposition Date:	Enter date disposition for the event occurred. (mm/dd/yy)
Placement:	Enter type of residential facility into which the juvenile was placed upon disposition. If the juvenile was not placed, select "None". Select "Non-Secure" if placed in a Non-Secure Residential Placement Facility or "Secure" if the juvenile was placed in a Secure Post-Adjudication Placement Facility. Non-secure residential placements that meet the TJPC definition of foster care eligible should be coded as "non-secure".
Primary Disposition:	Select the primary disposition the offender received for this event: Probation, Determinate Sentence Probation or TYC.

PART II: VARIABLE

1. Age at first referral: Offender's age at the time he/she was referred to juvenile court for the first time.
 - A. If the juvenile was 10 years of age at the time of first referral, enter a score of "2" in the box at the right.
 - B. If the juvenile was 11 – 14 years of age at the time of the first referral, enter a score of "1" in the box.
 - C. If the juvenile was 15 years of age or older at the time of the first referral, enter a score of "0" in the box.

2. Prior referrals for a reportable sex offense: The number of referrals for reportable sex offenses the juvenile has had prior to the most recent reportable sex offense. Reportable sex offenses are those listed in Texas Code of Criminal Procedure, Article 62.001(5), as sex offenses requiring registration. The number of referrals relates to the total number of times the youth was referred to the juvenile department for a reportable sex offense and not to the total number of offenses for which he/she was referred.
 - A. If the juvenile has 2 or more prior referrals for a reportable sex offense, enter the score of "2" in the box.
 - B. If the juvenile has 1 prior referral for a reportable sex offense, enter the score of "1" in the box.
 - C. If the juvenile has no prior referrals for a reportable sex offense, enter a score of "0" in the box.

3. Prior adjudications for a reportable sex offense: The number of adjudicated reportable sex offenses occurring prior to the most recent reportable sex offense. Reportable sex offenses are those listed in Article 62.001(5) as sex offenses requiring registration. The count refers to the number of separate adjudication hearings at which the youth was adjudicated for a reportable sex offense and not to the number of reportable sex offenses adjudicated.
 - A. If the juvenile has 1 or more prior adjudications for a reportable sex offense(s), enter a score of "1" in the box.
 - B. If the juvenile has no prior adjudications for a reportable sex offense, enter a score of "0" in the box.

4. Prior referrals for a felony offense: The number of felony referrals prior to the most recent referral for the reportable sex offense. The number of referrals relates to the total number of times the youth was referred to the juvenile probation department for a felony offense and not to the number of offenses for which he/she was referred. Include all sex and non-sex felony offenses.
 - A. If the juvenile has 2 or more prior felony referrals, enter a score of “2” in the box.
 - B. If the juvenile has 1 prior felony referral, enter a score of “1” in the box.
 - C. If the juvenile has no prior felony referrals, enter a score of “0” in the box.

5. Prior adjudication for a felony offense: The number of felony adjudications prior to the referral for the most recent reportable sex offense. The number entered refers to the number of separate adjudication hearings at which the youth was adjudicated for a felony offense and not to the number of offenses adjudicated. Include all adjudications for any felony offense, sex and non-sex related.
 - A. If the juvenile has 2 or more prior adjudications for a felony offense, enter a score of “2” in the box.
 - B. If the juvenile has 1 prior adjudication for a felony offense, enter a score of “1” in the box.
 - C. If the juvenile has no prior adjudications for felony offense, enter a score of “0” in the box.

6. Prior Placements: The number of prior out-of-home placements the youth has had prior to the most recent referral for the reportable sex offense. Out-of-home placements include all secure or non-secure residential facilities, emergency shelters and foster care placements.
 - A. If the juvenile has 1 or more placements prior to the current sex offense, enter a score of “1” in the box
 - B. If the juvenile has no prior placements, enter a score of “0” in the box.

7. Current Qualifying DSM Diagnosis: A listing of qualified DSM diagnoses may be found in Attachment A. Not all mental health diagnoses are qualified, therefore, not every diagnosis is included in Attachment A. Examples of common diagnoses NOT considered as a qualified diagnosis include conduct disorder, ADHD and oppositional defiant disorder. The qualified DSM diagnosis must have been made or approved by a licensed mental health professional. Current diagnoses include any qualifying DSM diagnosis made within 12 months of the juvenile’s disposition for the current reportable sex offense. The diagnosis may have been made after the offense was committed.
 - A. If the juvenile has been identified as having a current (within the past 12 months) qualifying DSM Diagnosis, enter a score of “1” in the box.
 - B. If the juvenile has not been identified as having a current qualifying DSM Diagnosis, enter a score of “0” in the box.

Registration Status: Enter the juvenile’s registration status by indicating whether the registration will be “Non-Public Registration” or “Full Registration”.

Total Score: Add the scores in each box and enter the sum in the box labeled “Total Score”. The score must equal the total of the individual element scores and may or may not match the final risk level assigned. Please note that the score will automatically be totaled when entering the data into the web-based database. If, however, any individual element score is changed after the score has been totaled, you must click in the “Total Score” box or manually update the field.

Assigned Risk Level: The assigned risk level must be completed for juveniles who are required by the juvenile court to register as a sex offender (include both public or non-public sex offender registrations). ONLY the juvenile court may designate the assigned risk level for the juvenile. The level entered here should coincide with that risk level included in the DPS CR-35 Sex Offender Registration Form.

A score between 0 and 1 indicates that the juvenile is a low risk, poses a low danger to the community and is not likely to engage in subsequent criminal sexual conduct. A low risk score corresponds to risk level “1”.

A score between 2 and 3 indicates that the juvenile is a moderate risk, poses a moderate danger to the community and may continue to engage in subsequent criminal sexual conduct. A moderate risk score corresponds to a risk level of “2”.

A score between 4 and 11 indicates that the juvenile is a high risk, poses a serious danger to the community and is likely to engage in subsequent criminal sexual conduct. A high risk score corresponds with a risk level of “3”.

A juvenile may have his or her risk score overridden by the judge, judicial designee or Risk Assessment Committee Member. In the case of an override, the juvenile’s total score will not match the risk level assigned. Enter a Risk Level of “1”, “2” or “3” into the box titled “Assigned Risk Level”.

Override: Yes/No: Indicate if the judge, judicial designee or TDCJ Risk Assessment Committee Member has overridden the juvenile’s risk score and assigned a risk level higher or lower than that indicated by the juvenile’s total score on the assessment.

Override Reason: Enter the reason the juvenile’s risk score was overridden and why the risk level coinciding with the total score was not assigned.

Signature/Date: The judge, judicial designee or a Risk Assessment Committee Member signs and dates the form on the day the offender's case is disposed. A signature is required for those cases where the juvenile is adjudicated to probation and ordered to register as a sex offender.

Signature/Date: Yes/No: Check "Yes" only if a judge, judicial designee or TDCJ Risk Assessment Committee Member has signed the TJSORAI-2 form. Check "No" if the TJSORAI-2 form has not been signed.

PART III: SUPPLEMENTAL DATA

1. Total Number of Sex Offenses Disposed of in this Event: Enter the total number of sex offenses disposed of in this event.

2. Total Number of Sex Offense Victims in this Disposition Event: Enter the total number of sex offense victims in this disposition event. Some offenses may involve one victim while others might involve multiple victims. It is important to include information on all victims involved in the disposition event. Include information for the juvenile's current victims even though the juvenile may not have been adjudicated for the offense.

3. Current Sex Offense Victim Information: This section is used to identify up to five victims involved in the disposition event. If more than five victims are involved enter data that reflects the varied characteristics of all the victims. For example, if two victims were 13 year old males not living with the juvenile, one was a 9 year old living with the juvenile, another three were 11 year old females not living with the juvenile and one victim was an adult female living with the juvenile, complete the information selecting victims from each age, gender and living situation category. The same should be true for victims with varied relationships to the juvenile offender and with various degrees of bodily injury sustained.
 - A. Age of Victim: Enter the age of each victim at the time the offense occurred.
 - B. Gender of Victim: Enter the gender of each victim by selecting "M" for a male victim and "F" for a female victim.
 - C. Does Victim live with Offender?: Select "Yes" if the offender resided with the victim at the time of the offense; select "No" if the offender did not reside with the victim at the time of the offense.
 - D. Relationship of Victim to Offender: This refers to the relationship of the victim to the offender. Relationships include relative, stranger and acquaintance. Select the appropriate choice that describes the relationship as defined below.
 - Relative: A person related to the victim by blood, marriage or adoption.
 - Stranger: A person who was not known to the victim at least 24 hours. This is defined from the victim's point of view, not the offender's. For example, if the offender claims to know the victim over 24 hours, but the victim has not known the offender for at least 24 hours, stranger should be selected.
 - Acquaintance: A person known to the victim for at least 24 hours. An acquaintance is defined from the victim's point of view, not the offender's.
 - E. Bodily Injury Sustained by Victim: Indicate if the victim sustained any bodily injury as a result of the sex offense. Select the choice from the list (defined below) that best describes the injury sustained by the victim.
 - None: No bodily injury reported in the law enforcement investigative report or observed as a result of interviewing the victim.
 - Moderate: Bodily injury such as tearing or drawing of blood which requires medical treatment. Do not consider a Sexual Assault Nurse Examination (SANE), also referred to as a "rape kit" or rape examination, to be medical treatment. A SANE examination is a forensic investigative tool.
 - Severe: Bodily injury resulting in extensive medical treatment or hospitalization of the victim.

4. Total Number of Prior Sex Offense Victims: This section is designed to collect information about the victims of the juvenile's prior sex offenses. Include victims for which the juvenile was referred to the juvenile probation department and/or for which information has been disclosed. Enter the total number of prior sex offense victims. Count each victim once. Do not include victims of the current offense(s). However, if the victim is both a current and a prior victim, count that person in both the current and prior categories.

5. Prior Sex Offense Victim Information: This section requests the same information as item three of Part III, but applies ONLY to prior sex offense victims. Complete as described above in #3.

6. History of Abuse: Indicate if the juvenile has ever been a suspected or confirmed victim of abuse. Select "No" if abuse is not suspected or confirmed. If abuse is suspected or confirmed, check all that apply. Abuse need not have been formally handled through CPS.
7. Substance Use: Select "No" if the juvenile does not use drugs or alcohol, if the juvenile's use of drugs/ alcohol is experimental or if the juvenile uses drugs/alcohol only occasionally. Select "Yes" if the juvenile has a drug or alcohol problem or if the juvenile uses drugs/ alcohol routinely (once a month or more).
8. DSM Diagnosis: Select the juvenile's primary mental health diagnosis, if any. Include all DSM mental health diagnoses, not just those qualifying diagnoses found in Attachment A.
9. School Behavior: This section focuses on difficulties the juvenile has had in school by identifying whether, prior to the current offense, the juvenile has ever been suspended or expelled from school, ever failed a grade in school or has ever been placed in an Alternative Educational setting (AEP, DAEP or JJAEP). Select "Yes" or "No" in the appropriate category to answer each question regarding school behavior. Do not include any school suspensions, expulsions or removals that were a direct result of the juvenile's sex offense.
10. Weapon Use: Select "Yes" if the offender used a weapon, other than a body part, in the commission of the primary sex offense. Select "No" if a weapon was not used.