



TEXAS CRIMINAL DEFENSE LAWYERS ASSOCIATION

Criminal Defense Lawyers Project

Post-Conviction

August 18-19, 2016
Wyndham Garden
Austin TX 78741

Topic:

Basic on the Deregistration of Sex Offender Convictions

Speaker:

Scott Smith

Law Office of Scott C. Smith
910 West Avenue Suite 10
Austin, TX 78701-2720
512.474.6484 phone
512.477.3227 fax
scs@defenselawyer.net Email

SEX OFFENDER DE-REGISTRATION – THE BASICS

Presented by Scott C. Smith, Austin, Texas (scs@defenselawyer.net)

TCDLA Post-Conviction Seminar, 17-18 August 2016

Most persons who are convicted of any offense involving a “sex crime” will be required to register as a sex offender in Texas, even those whose offenses involved relatively minor crimes, consensual sex, or no sexual contact at all with any person. Many of these people complete years of court ordered sex offense counseling and are considered pose no substantial risk of re-offending by trained professionals. Sadly, many of these people have suffered substantial negative consequences from sex offense registration, including exclusion from employment, residency restrictions that make it difficult, if not impossible, to find places to live in their home communities, harassment, threats and social isolation. Until recently, sex offender de-registration was not possible for anyone.

Fortunately, sex offender de-registration is now available for some of these people. In 2005, Texas lawmakers passed House Bill 867 which was designed to improve the rules for sex offender registration in many ways. See Article 62.401, Texas Code of Criminal Procedure. Those changes included a new procedure for certain sex offenders to request early termination of their requirement to register as a Texas sex offender if they are determined not to present a continuing threat to society. This would allow law enforcement authorities and the state to focus their resources on offenders who threaten public safety and would serve the interests of justice for offenders who are not a threat to re-offend.

In 2011, Senate Bill 198 and House Bill 227 were passed and enacted as the "Romeo and Juliet Bill". See article Art. 62.301, 42.017, and 42.12, sect. 5(g) CCP., Texas Code of Criminal Procedure. Like Article 62.401, this statute allows certain offenders to be removed from the Texas sex offender registry. It provides for a more streamlined path to de-registration, but applies only to a much smaller group of offenders.

I. “FORMAL” DE-REGISTRATION

Authority

Primary statutory source: Art. 62.401 CCP

Also see Title 22 Texas Administrative Code 810.301 - 810.308

“Hard” requirements (certainly)

Offense must be on DPS Tiered Offense Chart (prepared pursuant to 62.402), i.e. must be a reportable conviction or adjudication “for which a person must register under this chapter [Article 62 CCP] for a period that exceeds the minimum required registration period under federal law.” 62.403(b) CCP.

Often depends on facts not in the pleadings, such as age of victim and date of offense.

There may be valid arguments about whether the tiered chart is correct.

Some can be debated with the CSOT and some with DPS. For example, Indecency by exposure with 10 years of probation + 10 years of registration after completing probation is greater than 15 years required under SORNA. Minimum actually required under federal law for this person or minimum that would be required if he were convicted under federal law?

Many anomalies: e.g. Possessing or promoting child pornography is eligible but attempt to do so is not.

DPS responsible for creating and keeping the list. Randy Ortega, DPS 512-424-5841.

Must have no more than one “reportable adjudication or conviction.” 62.403(b) CCP.

Must undergo 403 risk assessment evaluation by qualified evaluation specialist. 62.404 (a) CCP.

Must pay for evaluation and costs. 62.406 CCP.

“Soft” Requirements (maybe)

Only convictions or deferred adjudications handed down by Texas courts may be considered. (Judge in sentencing court must order de-registration and decisions from out of state judges not recognized.) CSOT Website.

Federal court judges?

The following requirements were previously listed on CSOT’s website but have been removed with the publication of its new check list. Presumably they are no longer requirements, but this is not clear:

Has not been convicted of any offense for which imprisonment for more than 1 year may be imposed as verified by a current federal and state criminal history.

Has not been convicted of any additional sex offense including misdemeanors during the required registration period.

Has successfully completed an appropriate sex offender treatment program as defined in Texas Administrative Code, 810.

It is unclear whether a high risk determination on the risk assessment will render an applicant ineligible.

Procedure

Apply for with Council on Sex Offender Treatment (CSOT). See CSOT Web Site for application.

Disputes over the list must be addressed with DPS.

Undefined process.

Inconsistency of results.

Submit to risk assessment by qualified evaluation specialists.

File petition in sentencing court and serve the prosecution a copy.

No limit on number of attempts allowed.

DEWALT v.STATE of Texas, No. 03-12-00785-CR., 2013 WL 5979612 (Nov. 7, 2013).

Can’t appeal court’s decisions because appeal is criminal in nature and such decisions are not “final judgments”. “44.02 authorizes appeals only from “final judgments,” ... In this context, “final judgment” refers to a final judgment of conviction, as

defined by Article 42.01 of the Code—“A judgment is the written declaration of the court signed by the trial judge and entered of record showing the conviction or acquittal of the defendant.” The district court’s denial of Dewalt’s motion for early termination is not a final judgment of conviction, and is, therefore, not a “final judgment” that can be appealed under article 44.02.”

No mandamus or appeal because decision is within discretion of sentencing court. Offense must be on DPS Tiered Offense List, even if the list is wrong. “This is so because Dewalt’s offense giving rise to her registration obligation, aggravated kidnapping, is not among those that the Council has included on the list it publishes under Article 62.402(b). 39 While Dewalt presented proof to the effect that her offense met Article 62.402’s substantive requirements for offenses that the Council includes on the list, it remains that her offense has not actually “appear[ed] on the list published under Article 62.402(b),” and inclusion of the offense on the list, not merely eligibility to be included, is what the Legislature has required before a movant can obtain early termination.”

II. ROMEO AND JULIET DE-REGISTRATION

Primary statutory source: Art. 62.301, 42.017, and 42.12, sect. 5(g) CCP.

Requirements

- Must have “a single reportable adjudication or conviction”
- V must be at least 15
- D must be no more than 4 years older
- Charge is based solely on ages of V and D

Compare/contrast with formal de-registration

- Need not get sex offender evaluation or complete therapy,
- Need not apply to CSOT
- Much more limited applicability

III. REGISTRATION EXEMPTIONS FOR JUVENILES

Art. 62.351 CCP.

IV. CHALLENGING REQUIREMENT TO REGISTER OUT OF STATE CONVICTIONS

62.003 DPS required to determine whether out-of-state offenses contain “elements that are substantially similar to the elements of an offense under the laws of this state”.

Appeals to be filed in Travis County District courts.

Substantially similar offense list maintained by DPS and disseminated to DA’s. Call local DA or Randy Ortega with DPS.

“This construction necessarily requires that the Department compare the elements of the out-of-state offense with the analogous Texas offense to identify points of overlap. When the Department finds that the offenses cover the same conduct, the analysis need proceed no further because it will be evident that the foreign conviction is substantially similar to the Texas offense for SORA purposes. However, in circumstances in which the offenses overlap but the foreign offense also criminalizes conduct that is not covered under the Texas offense, the Department must review the conduct underlying the foreign conviction to determine if that conduct is, in fact, within the scope of the Texas offense.³ If it is, then the foreign conviction is a registerable offense under SORA’s substantially similar test.” *Texas Dept. of Public Safety v. Garcia*, 327 S.W.3d 898, 906 (Tex.App.Austin, 2010)

The elements of defendant's Massachusetts conviction for indecent assault and battery on a person over 14 years of age were not substantially similar to the Texas offense of sexual assault, and thus defendant was not required to register as a sex offender in Texas based on his Massachusetts conviction; the "indecent touching" of clothed or unclothed parts of the anatomy encompassed by the Massachusetts offense differed significantly from the "contact or penetration" of a person's "anus" or "sexual organ" required for the Texas offense, the Massachusetts statute was designed to protect against, and punish, unwanted, indecent touching while the Texas statute protected against the severe physical and psychological trauma of rape, and the offenses had different ranges of punishment. Vernon's Ann.Texas C.C.P. arts.

62.001(5)(H), 62.051(a); M.G.L.A. c. 265, § 13H; V.T.C.A., Penal Code § 22.011 . *Texas Dept. of Public Safety v. Anonymous Adult Texas Resident*, 382 S.W.3d 531 (Tex.App. Austin,2012).

For a foreign statute to be substantially similar to a reportable Sex Offender Registration Act (SORA) offense, the elements being compared must display a high degree of likeness, but may be less than identical. [emphasis added] Vernon's Ann.Texas C.C.P. arts. 62.001-62.408. *Texas Dept. of Public Safety v. Anonymous Adult Texas Resident*, 382 S.W.3d 531 (Tex.App. Austin,2012).

V. EFFECT OF DE-REGISTRATION

If a person is granted an early termination under Texas law then they would no longer be required to register in Texas and would not be in violation of Texas' law against failure to register. (Article 62.102 in the Texas Code of Criminal Procedure) However, if the person wishes to travel outside of Texas or if they were convicted of a Federal Sex Offense, they would be subject to the federal registration time lines set out in SORNA. 18 U.S.C. 2250 creates a federal penalty for failure to register in certain circumstances, such as interstate or international travel or travel on or off an Indian reservation by a sex offender, or conviction of a federal sex offense for which registration is required.

What if a state whose own laws do not require registration declines to register someone who is required to register under SORNA? 18 USC 2250 (b) provides an affirmative defense:

(b) Affirmative Defense.— In a prosecution for a violation under subsection (a), it is an affirmative defense that—

- (1)uncontrollable circumstances prevented the individual from complying;
- (2)the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and
- (3)the individual complied as soon as such circumstances ceased to exist.

Enabled to seal records after de-registration of successfully completed deferred adjudication? Tex Gov't Code Section 411.081(e)(1) disallows non-disclosure of any person who has been previously convicted or placed on deferred adjudication for any "offense requiring registration as a sex offender."

VI. HELPFUL INTERNET LINKS

Council on Sex Offender Treatment Home Page:
<http://www.dshs.state.tx.us/csot/default.shtm>

DPS Tiered Offense Chart:
<https://records.txdps.state.tx.us/SexOffender/SORP-SORNA.pdf>

DOJ Sex Offender Registration and Failure to Register FAQs:
http://www.ojp.usdoj.gov/smart/faqs/faq_registration.htm

SORNA Final Guidelines and Commentary:
http://www.ojp.usdoj.gov/smart/pdfs/final_sornaguidelines.pdf

Texas Voices For Reason and Justice: a statewide, non-profit, volunteer organization devoted to promoting a more balanced, effective, and rational criminal justice system. TVRJ advocates for common sense, research based laws and policies through education, legislation, litigation, and support for persons required to register for sex related offenses as well as for members of their families.
<http://texasvoices.org/>



**Texas Department of State Health Services
Professional Licensing and Certification Unit
Council on Sex Offender Treatment
P.O. Box 149347, Mail Code 1982
Austin, Texas 78714
ATTN: CSOT Executive Director
Phone (512) 834-4530 ** Fax (512) 834-6677
Email: csot@dshs.state.tx.us**

**INITIAL ELIGIBILITY CHECKLIST FOR
EARLY TERMINATION OF CERTAIN PERSON'S OBLIGATION TO REGISTER**

(Please Type or Print Clearly)

Date: _____

Attorney of Record: _____ **Email:** _____

Address: _____

City: _____ **Zip Code:** _____

Telephone _____ **Fax:** _____

Registered Sex Offender's Full Name: _____

SSN: _____ **DOB:** _____

Address: _____

City: _____ **Zip Code:** _____

Telephone _____

Email: _____

Reportable Conviction or Adjudication: _____

Texas Penal Code: _____

Age of the Victim at the time of the Offense: _____

County of Sentencing Court: _____

Sex Offender Treatment: Yes / No

Community Supervision: Yes / No

(List of required supporting documentation is continued on next page)

In addition to this form, you must also submit the following supporting documentation:

- 1. Order of Conviction/Deferred Adjudication Order;**
- 2. If the reportable conviction or adjudication involved a minor, the applicant shall provide a copy of one of the following documents which indicates the age of the victim at the time of the offense:**
 - a. Indictment**
 - b. Offense Report**
 - c. Probable Cause Affidavit**
- 3. Current Criminal History Background Checks conducted by both the Texas Department of Public Safety and the Federal Bureau of Investigation. Click on the respective link and follow the directions provided by each governmental agency.**
 - <http://records.txdps.state.tx.us>
 - <http://www.fbi.gov/about-us/cjis/background-checks>
- 4. Cashier's Check or Money Order in the amount of \$50, made payable to "Council on Sex Offender Treatment". This fee is assessed for the administrative review of an applicant's file and/or request to early terminate his/her obligation to register as a sex offender in Texas.**

The following additional documents are not required with an Application for Early Termination, but may be enclosed as supporting documentation:

- 5. If an applicant has undergone sex offender treatment and has successfully completed his/her treatment program, a letter from the LSOTP confirming the applicant's successful completion of treatment;**
- 6. If an applicant successfully discharged community supervision or parole, a copy of the order discharging applicant successfully from community supervision or parole.**

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

December 2015

Texas Code of Criminal Procedure Chapter 62, Subchapter I. Early Termination of Certain Persons' Obligation to Register.

Art. 62.402. Determination of Minimum Required Registration Period

(a) The department by rule shall determine the minimum required registration period under federal law for each reportable conviction or adjudication under this chapter.

(b) After determining the minimum required registration period for each reportable conviction or adjudication under Subsection (a), the department shall compile and publish a list of reportable convictions or adjudications for which a person must register under this chapter for a period that exceeds the minimum required registration period under federal law.

(c) To the extent possible, the department shall periodically verify with the United States Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking or another appropriate federal agency or office the accuracy of the list of reportable convictions or adjudications described by Subsection (b).

Registrants who were 17 years of age or older at the time the offense resulting in a reportable conviction or adjudication was committed

Reportable convictions or adjudications where the registration period under Texas law *exceeds* the minimum registration period under federal law

Texas Offense	Length of Duty to Register as a Sex Offender		
	Texas	Federal	
§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
§ 20A.02(a)(3)	Trafficking of persons	Lifetime	15 years, Tier I
§ 20A.02(a)(4)	Trafficking of persons	Lifetime	15 years, Tier I
§ 20A.02(a)(7)	Trafficking of persons	Lifetime	25 years, Tier II
§ 20A.02(a)(8)	Trafficking of persons	Lifetime	25 years, Tier II
§ 21.02 ¹	Continuous sexual abuse of young child or children	Lifetime	25 years, Tier II
§ 21.02 ²	Continuous sexual abuse of young child or children	Lifetime	No duty to Register

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

§ 21.08	Indecent exposure—second violation, but not if the second violation results in deferred adjudication	10 years post discharge	No Duty to Register
§ 21.11(a)(1)	Indecency with a child by contact & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	Lifetime	No Duty to Register
§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 16 years but not the age of 17 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was not done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to participate	Lifetime	15 years, Tier I
§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 13 years but not the age of 16 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was <i>not</i> done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to participate	Lifetime	25 years, Tier II
§ 21.11(a)(2)	Indecency with a child by exposure & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
§ 22.011	Sexual assault, offense is solely based on the victim's age & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	Lifetime	No duty to Register
§ 22.011	Sexual assault, offense is solely based on the victim's age & the victim is 16 years of age or older	Lifetime	25 years, Tier II

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

§ 22.011	Sexual assault where the victim has attained the age of 13 years but not the age of 16 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was not done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (g) with a victim that is incapable of declining participation or communicating unwillingness to participate	Lifetime	25 years, Tier II
§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	Lifetime	No Duty to Register
§ 22.021	Aggravated sexual assault where the victim has attained the age of 13 years but not the age of 16 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was not done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (g) with a victim that is incapable of declining participation or communicating unwillingness to	Lifetime	25 years, Tier II
§ 25.02	Prohibited sexual conduct	Lifetime	15 years, Tier I
§ 25.02	Prohibited sexual conduct & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	Lifetime	No duty to Register
§ 25.02	Prohibited sexual conduct & the victim is 16 years of age or older but less than 18 years of age	Lifetime	25 years, Tier II
§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(2)	Lifetime	15 years, Tier I
§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(1) & the victim is at least 13 years of age	Lifetime	25 years, Tier II
§ 30.02(d) ¹	Burglary of a habitation committed or engaged in with the intent to commit 21.02	Lifetime	25 years, Tier II
§ 43.05(a)(2)	Compelling prostitution of a person younger than 18 years of age	Lifetime	25 years, Tier II
§ 43.23(h)	Obscenity	Lifetime	25 years, Tier II
§ 43.25	Sexual performance by a child	Lifetime	25 years, Tier II
§ 43.25	Sexual performance by a child & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	Lifetime	No Duty to Register

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

<p>An attempt, conspiracy, solicitation, or solicitation of a minor to commit:</p>	§ 43.26(a)	Possessing or promoting child pornography	Lifetime	15 years, Tier I
	§ 43.26(e)	Possessing or promoting child pornography	Lifetime	25 years, Tier II
	§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
	§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
	§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
	§ 21.02 ²	Continuous sexual abuse of young child or children	10 years post discharge	No Duty to Register
	§ 21.11(a)(1)	Indecency with a child by contact & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 16 years but not the age of 17 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was not done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to participate	10 years post discharge	No Duty to Register
	§ 21.11(a)(2)	Indecency with a child by exposure & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 22.011	Sexual assault, offense is solely based on the victim's age & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 25.02	Prohibited sexual conduct & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No duty to Register
	§ 43.25	Sexual performance by a child & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No duty to Register

1 All acts of "sexual abuse," defined in Texas Penal Code § 21.02(c), are: indecency with a child by contact with a child at least 13 years of age and committed in a manner other than by touching, including touching through the clothing, the breast of a child (§ 21.11(a)(1)) burglary of a habitation committed with the intent to commit the previous listed offense (§ 30.02(d)); sexual performance by child (§ 43.25); or compelling prostitution of a minor (§ 43.05(a)(2))

2 All acts of "sexual abuse," defined in Texas Penal Code § 21.02(c), are: indecency with a child by contact with a child at least 13 years of age and committed with consensual conduct as defined by 42 U.S.C. § 16911(5)(c)

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

Registrants who were 17 years of age or older at the time the offense resulting in a reportable conviction or adjudication was committed (cont.)

Texas Offense		Length of Duty to Register as a Sex Offender	
		Texas	Federal
§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	15 years, Tier I
§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	Lifetime, Tier III
§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	Lifetime, Tier III
§ 20.04(a)(4)	Aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually	Lifetime	Lifetime, Tier III
§ 21.02 ¹	Continuous sexual abuse of young child or children	Lifetime	Lifetime, Tier III
§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 13 years but not the age of 16 years; the touching was not done through the victim's clothing and involved the victim's genitals; and the touching was done (i) by force, (ii) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (iii) by rendering the victim unconscious, (iv) by administering a drug, intoxicant or other similar substance to the victim, (v) by threatening or placing the victim in fear, (vi) with a victim that is incapable of appraising the nature of the conduct, or (vii) with a victim that is incapable of declining participation or communicating unwillingness to participate	Lifetime	Lifetime, Tier II
§ 21.11(a)(1)	Indecency with a child by contact & the victim is younger than 13 years of age	Lifetime	Lifetime, Tier III
§ 21.11(a)(2)	Indecency with a child by exposure	10 years post discharge	15 years, Tier I
§ 22.011	Sexual assault	Lifetime	Lifetime, Tier III
§ 22.011	Sexual assault, offense is solely based on the victim's age & the victim is less than 16 years of age	Lifetime	Lifetime, Tier III
§ 22.021	Aggravated sexual assault	Lifetime	Lifetime, Tier III
§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age	Lifetime	Lifetime, Tier III
§ 25.02	Prohibited sexual conduct & the victim is less than 16 years of age	Lifetime	Lifetime, Tier III

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

<p>An attempt, conspiracy, solicitation, or solicitation of a minor to commit:</p>	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 20.04(a)(4), 22.011, 22.021 or 25.02	Lifetime	Lifetime, Tier III
	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(1) & the victim is younger than 13 years of age	Lifetime	Lifetime, Tier III
	§ 30.02(d) ¹	Burglary of a habitation committed or engaged in with the intent to commit 21.02	Lifetime	Lifetime, Tier III
	§ 33.021(b)	Online solicitation of a minor	10 years post discharge	15 years, Tier I
	§ 33.021(c)	Online solicitation of a minor	10 years post discharge	25 years, Tier II
	§ 43.05(a)(1)	Compelling prostitution	10 years post discharge	15 years, Tier I
	§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	15 years, Tier I
	§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	Lifetime, Tier III
	§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	Lifetime, Tier III
	§ 20.04(a)(4)	Aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually	10 years post discharge	Lifetime, Tier III
	§ 20A.02(a)(3)	Trafficking of persons	10 years post discharge	15 years, Tier I
	§ 20A.02(a)(4)	Trafficking of persons	10 years post discharge	15 years, Tier I
	§ 20A.02(a)(7)	Trafficking of persons	10 years post discharge	25 years, Tier II
	§ 20A.02(a)(8)	Trafficking of persons	10 years post discharge	25 years, Tier II
	§ 21.02 ¹	Continuous sexual abuse of young child or children	10 years post discharge	Lifetime, Tier III
	§ 21.02 ²	Continuous sexual abuse of young child or children	10 years post discharge	25 years, Tier II
	§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 13 years but not the age of 16 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was <i>not</i> done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to	10 years post discharge	25 years, Tier II

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit:	§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 13 years but not the age of 16 years; the touching was not done through the victim's clothing and involved the victim's genitals; and the touching was done (i) by force, (ii) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (iii) by rendering the victim unconscious, (iv) by administering a drug, intoxicant or other similar substance to the victim, (v) by threatening or placing the victim in fear, (vi) with a victim that is incapable of appraising the nature of the conduct, or (vii) with a victim that is incapable of declining participation or communicating unwillingness to participate	10 years post discharge	Lifetime, Tier III
	§ 21.11(a)(1)	Indecency with a child by contact & the victim is younger than 13 years of age	10 years post discharge	Lifetime, Tier III
	§ 21.11(a)(2)	Indecency with a child by exposure	10 years post discharge	15 years, Tier I
	§ 22.011	Sexual assault	10 years post discharge	Lifetime, Tier III
	§ 22.011	Sexual assault, offense is solely based on the victim's age & the victim is less than 16 years of age	10 years post discharge	Lifetime, Tier III
	§ 20A.02(a)(8)	Sexual assault, offense is solely based on the victim's age & the victim is 16 years of age or older	10 years post discharge	25 years, Tier II
	§ 22.021	Aggravated sexual assault	10 years post discharge	Lifetime, Tier III
	§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age	10 years post discharge	Lifetime, Tier III
	§ 25.02	Prohibited sexual conduct	10 years post discharge	15 years, Tier I
	§ 25.02	Prohibited sexual conduct & the victim is less than 16 years of age	10 years post discharge	Lifetime, Tier III
	§ 25.02	Prohibited sexual conduct & the victim is 16 years of age or older but less than 18 years of age	10 years post discharge	25 years, Tier II
	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 20.04(a)(4), 22.011, 22.021 or 25.02	10 years post discharge	Lifetime, Tier III
	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(2)	10 years post discharge	15 years, Tier I
	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(1) & the victim is younger than 13 years of age	10 years post discharge	Lifetime, Tier III
	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(1) & the victim is at least 13 years of age	10 years post discharge	25 years, Tier II
	§ 30.02(d) ¹	Burglary of a habitation committed or engaged in with the intent to commit 21.02	10 years post discharge	Lifetime, Tier III

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit.	§ 30.02(d) ²	Burglary of a habitation committed or engaged in with the intent to commit 21.02	10 years post discharge	25 years, Tier II
	§ 43.05(a)(1)	Compelling prostitution	10 years post discharge	15 years, Tier I
	§ 43.05(a)(2)	Compelling prostitution of a person younger than 18 years of age	10 years post discharge	25 years, Tier II
	§ 43.25	Sexual performance by a child	10 years post discharge	25 years, Tier II
	§ 43.26(a)	Possessing or promoting child pornography	10 years post discharge	15 years, Tier I
	§ 43.26(e)	Possessing or promoting child pornography	10 years post discharge	25 years, Tier II

1 One act of “sexual abuse,” defined in Texas Penal Code § 21.02(c), is: aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually (§ 20.04(a)(4)); indecency with a child by contact with a child less than 13 years of age and committed in a manner other than by touching, including touching through the clothing, the breast of a child (§ 21.11(a)(1)); sexual assault (§ 22.011); aggravated sexual assault (§ 22.021); burglary of a habitation committed with the intent to commit one of the previous listed offenses (§ 30.02(d)); or trafficking of persons (§ 20A.02(a)(7) or (8))

2 All acts of “sexual abuse,” defined in Texas Penal Code § 21.02(c), are: indecency with a child by contact with a child at least 13 years of age and committed in a manner other than by touching, including touching through the clothing, the breast of a child (§ 21.11(a)(1)); burglary of a habitation committed with the intent to commit the previous listed offense (§ 30.02(d)); sexual performance by child (§ 43.25); or compelling prostitution of a minor (§ 43.05(a)(2))

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

Registrants who were younger than 17 years of age at the time the offense resulting in a reportable conviction or adjudication was committed and the reportable conviction or adjudication is based on a conviction or deferred adjudication

Reportable convictions or adjudications where the registration period under Texas law *exceeds* the minimum registration period under federal law

Texas Offense		Length of Duty to Register as a Sex Offender	
		Texas	SORNA
§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
§ 21.08	Indecent exposure—second violation, but not if the second violation results in deferred adjudication	10 years post discharge	No Duty to Register
§ 21.11(a)(1)	Indecency with a child by contact & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 16 years but not the age of 17 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was not done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to	10 years post discharge	No Duty to Register
§ 21.11(a)(2)	Indecency with a child by exposure & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
§ 22.011	Sexual assault, offense is solely based on the victim's age & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No duty to Register
§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit:	§ 25.02	Prohibited sexual conduct & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 43.25	Sexual performance by a child & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
	§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
	§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age & the offender is the parent or guardian of the victim	10 years post discharge	No Duty to Register
	§ 21.11(a)(1)	Indecency with a child by contact & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 16 years but not the age of 17 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was not done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to	10 years post discharge	No Duty to Register
	§ 21.11(a)(2)	Indecency with a child by exposure & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 22.011	Sexual assault, offense is solely based on the victim's age & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 25.02	Prohibited sexual conduct & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 43.25	Sexual performance by a child & involved consensual conducted as defined by 42 U.S.C. § 16911(5)(C)	10 years post discharge	No Duty to Register

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

Registrants who were younger than 17 years of age at the time the offense resulting in a reportable conviction or adjudication was committed and the reportable conviction or adjudication is based on a conviction or deferred adjudication (cont.)

Reportable convictions or adjudications where the registration period under Texas law *does not* exceed the minimum registration period under federal law

Texas Offense		Length of Duty to Register as a Sex Offender	
		Texas	SORNA
§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	15 years, Tier I
§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	Lifetime, Tier III
§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	Lifetime, Tier III
§ 20.04(a)(4)	Aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually	10 years post discharge	Lifetime, Tier III
§ 20A.02(a)(3)	Trafficking of persons	10 years post discharge	15 years, Tier I
§ 20A.02(a)(4)	Trafficking of persons	10 years post discharge	15 years, Tier I
§ 20A.02(a)(7)	Trafficking of persons	10 years post discharge	25 years, Tier II
§ 20A.02(a)(8)	Trafficking of persons	10 years post discharge	25 years, Tier II
§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 13 years but not the age of 16 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was <i>not</i> done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to	10 years post discharge	25 years, Tier II

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 13 years but not the age of 16 years; the touching was not done through the victim's clothing and involved the victim's genitals; and the touching was done (i) by force, (ii) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (iii) by rendering the victim unconscious, (iv) by administering a drug, intoxicant or other similar substance to the victim, (v) by threatening or placing the victim in fear, (vi) with a victim that is incapable of appraising the nature of the conduct, or (vii) with a victim that is incapable of declining	10 years post discharge	Lifetime, Tier III
§ 21.11(a)(1)	Indecency with a child by contact & the victim is younger than 13 years of age	10 years post discharge	Lifetime, Tier III
§ 21.11(a)(2)	Indecency with a child by exposure	10 years post discharge	15 years, Tier I
§ 22.011	Sexual assault	10 years post discharge	Lifetime, Tier III
§ 22.011	Sexual assault, offense is solely based on the victim's age & the victim is less than 16 years of age	10 years post discharge	Lifetime, Tier III
§ 22.011	Sexual assault, offense is solely based on the victim's age & the victim is 16 years of age or older	10 years post discharge	25 years, Tier II
§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age	10 years post discharge	Lifetime, Tier III
§ 22.021	Aggravated sexual assault	10 years post discharge	Lifetime, Tier III
§ 25.02	Prohibited sexual conduct	10 years post discharge	15 years, Tier I
§ 25.02	Prohibited sexual conduct & the victim is less than 16 years of age	10 years post discharge	Lifetime, Tier III
§ 25.02	Prohibited sexual conduct & the victim is 16 years of age or older but less than 18 years of age	10 years post discharge	25 years, Tier II
§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 20.04(a)(4), 22.011, 22.021 or 25.02	10 years post discharge	Lifetime, Tier III
§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(2)	10 years post discharge	15 years, Tier I
§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(1) & the victim is younger than 13 years of age	10 years post discharge	Lifetime, Tier III
§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(1) & the victim is at least 13 years of age	10 years post discharge	25 years, Tier II
§ 33.021(c)	Online solicitation of a minor	10 years post discharge	25 years, Tier II
§ 43.05(a)(1)	Compelling prostitution	10 years post discharge	15 years, Tier I
§ 43.05(a)(2)	Compelling prostitution of a person younger than 18 years of age	10 years post discharge	25 years, Tier II
§ 43.23(h)	Obscenity	10 years post discharge	25 years, Tier II
§ 43.25	Sexual performance by a child	10 years post discharge	25 years, Tier II
§ 43.26(a)	Possessing or promoting child pornography	10 years post discharge	15 years, Tier I

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit:	§ 43.26(e)	Possessing or promoting child pornography	10 years post discharge	25 years, Tier II
	§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	15 years, Tier I
	§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	Lifetime, Tier III
	§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	Lifetime, Tier III
	§ 20.04(a)(4)	Aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually	10 years post discharge	Lifetime, Tier III
	§ 20A.02(a)(3)	Trafficking of persons	10 years post discharge	15 years, Tier I
	§ 20A.02(a)(4)	Trafficking of persons	10 years post discharge	15 years, Tier I
	§ 20A.02(a)(7)	Trafficking of persons	10 years post discharge	25 years, Tier II
	§ 20A.02(a)(8)	Trafficking of persons	10 years post discharge	25 years, Tier II
	§ 21.11(a)(1)	Indecency with a child by contact where the victim has attained the age of 13 years but not the age of 16 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was <i>not</i> done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to	10 years post discharge	25 years, Tier II

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit:

<p>§ 21.11(a)(1)</p> <p>§ 21.11(a)(1)</p> <p>§ 21.11(a)(2)</p> <p>§ 22.011</p> <p>§ 22.011</p> <p>§ 22.011</p> <p>§ 22.021</p> <p>§ 22.021</p> <p>§ 25.02</p> <p>§ 25.02</p> <p>§ 25.02</p> <p>§ 30.02(d)</p> <p>§ 30.02(d)</p> <p>§ 30.02(d)</p> <p>§ 30.02(d)</p> <p>§ 43.05(a)(1)</p> <p>§ 43.05(a)(2)</p> <p>§ 43.25</p> <p>§ 43.26(a)</p> <p>§ 43.26(e)</p>	<p>Indecency with a child by contact where the victim has attained the age of 13 years but not the age of 16 years; the touching was not done through the victim's clothing and involved the victim's genitals; and the touching was done (i) by force, (ii) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (iii) by rendering the victim unconscious, (iv) by administering a drug, intoxicant or other similar substance to the victim, (v) by threatening or placing the victim in fear, (vi) with a victim that is incapable of appraising the nature of the conduct, or (vii) with a victim that is incapable of declining participation or communicating unwillingness to participate</p> <p>Indecency with a child by contact & the victim is younger than 13 years of age</p> <p>Indecency with a child by exposure</p> <p>Sexual assault</p> <p>Sexual assault, offense is solely based on the victim's age & the victim is less than 16 years of age</p> <p>Sexual assault, offense is solely based on the victim's age & the victim is 16 years of age or older</p> <p>Aggravated sexual assault</p> <p>Aggravated sexual assault, offense is solely based on the victim's age</p> <p>Prohibited sexual conduct</p> <p>Prohibited sexual conduct & the victim is less than 16 years of age</p> <p>Prohibited sexual conduct & the victim is 16 years of age or older but less than 18 years of age</p> <p>Burglary of a habitation committed or engaged in with the intent to commit 20.04(a)(4), 22.011, 22.021 or 25.02</p> <p>Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(2)</p> <p>Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(1) & the victim is younger than 13 years of age</p> <p>Burglary of a habitation committed or engaged in with the intent to commit 21.11(a)(1) & the victim is at least 13 years of age</p> <p>Compelling prostitution</p> <p>Compelling prostitution of a person younger than 18 years of age</p> <p>Sexual performance by a child</p> <p>Possessing or promoting child pornography</p> <p>Possessing or promoting child pornography</p>	<p>10 years post discharge</p>	<p>Lifetime, Tier III</p> <p>Lifetime, Tier III</p> <p>15 years, Tier I</p> <p>Lifetime, Tier III</p> <p>Lifetime, Tier III</p> <p>25 years, Tier II</p> <p>Lifetime, Tier III</p> <p>Lifetime, Tier III</p> <p>15 years, Tier I</p> <p>Lifetime, Tier III</p> <p>25 years, Tier II</p> <p>Lifetime, Tier III</p> <p>15 years, Tier I</p> <p>Lifetime, Tier III</p> <p>25 years, Tier II</p> <p>15 years, Tier I</p> <p>25 years, Tier II</p>
--	---	---	---

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

Registrants who were 14 years of age or older at the time the offense resulting in a reportable conviction or adjudication was committed and the reportable conviction or adjudication is based on an adjudication of delinquent conduct

Reportable convictions or adjudications where the registration period under Texas law exceeds the minimum registration period under federal law

Texas Offense		Length of Duty to Register as a Sex Offender	
		Texas	SORNA
§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
§ 20A.02(a)(3)	Trafficking of persons	10 years post discharge	No Duty to Register
§ 20A.02(a)(4)	Trafficking of persons	10 years post discharge	No Duty to Register
§ 20A.02(a)(7)	Trafficking of persons	10 years post discharge	No Duty to Register
§ 20A.02(a)(8)	Trafficking of persons	10 years post discharge	No Duty to Register
§ 21.08	Indecent exposure—second violation, but not if the second violation results in deferred adjudication	10 years post discharge	No Duty to Register
§ 21.11(a)(1)	Indecency with a child by contact & the victim is at least 16 years of age	10 years post discharge	No Duty to Register
§ 21.11(a)(1)	Indecency with a child by contact committed where the victim has not attained the age of 16 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to participate (iii) the touching was <i>not</i> done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to participate	10 years post discharge	No Duty to Register

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit:	§ 21.11(a)(2)	Indecency with a child by exposure	10 years post discharge	No Duty to Register
	§ 22.011	Sexual assault	10 years post discharge	No Duty to Register
	§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & the offense involved consensual conduct as defined by 42 U.S.C § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & the victim is at least 12 of age	10 years post discharge	No Duty to Register
	§ 25.02	Prohibited sexual conduct	10 years post discharge	No Duty to Register
	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11	10 years post discharge	No Duty to Register
	§ 33.021(c)	Online solicitation of a minor	10 years post discharge	No Duty to Register
	§ 43.05(a)(1)	Compelling prostitution	10 years post discharge	No Duty to Register
	§ 43.05(a)(2)	Compelling prostitution of a person younger than 18 years of age	10 years post discharge	No Duty to Register
	§ 43.23(h)	Obscenity	10 years post discharge	No Duty to Register
	§ 43.25	Sexual performance by a child	10 years post discharge	No Duty to Register
	§ 43.26	Possessing or promoting child pornography	10 years post discharge	No Duty to Register
	§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
	§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
	§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
	§ 20A.02(a)(3)	Trafficking of persons	10 years post discharge	No Duty to Register
	§ 20A.02(a)(4)	Trafficking of persons	10 years post discharge	No Duty to Register
	§ 20A.02(a)(7)	Trafficking of persons	10 years post discharge	No Duty to Register
	§ 20A.02(a)(8)	Trafficking of persons	10 years post discharge	No Duty to Register
	§ 21.11(a)(1)	Indecency with a child by contact & the victim is at least 16 years of age	10 years post discharge	No Duty to Register

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit:	§ 21.11(a)(1)	Indecency with a child by contact committed where the victim has not attained the age of 16 years and (i) the touching did not involve the victim's genitals; (ii) the touching involved the victim's genitals but was done through the clothing; or (iii) the touching was <i>not</i> done (a) by force, (b) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (c) by rendering the victim unconscious, (d) by administering a drug, intoxicant or other similar substance to the victim, (e) by threatening or placing the victim in fear, (f) with a victim that is incapable of appraising the nature of the conduct, and (e) with a victim that is incapable of declining participation or communicating unwillingness to participate	10 years post discharge	No Duty to Register
	§ 21.11(a)(2)	Indecency with a child by exposure	10 years post discharge	No Duty to Register
	§ 22.011	Sexual assault	10 years post discharge	No Duty to Register
	§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & the offense involved consensual conduct as defined by 42 U.S.C § 16911(5)(C)	10 years post discharge	No Duty to Register
	§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & the victim is at least 12 of age	10 years post discharge	No Duty to Register
	§ 25.02	Prohibited sexual conduct	10 years post discharge	No Duty to Register
	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11	10 years post discharge	No Duty to Register
	§ 43.05(a)(1)	Compelling prostitution	10 years post discharge	No Duty to Register
	§ 43.05(a)(2)	Compelling prostitution of a person younger than 18 years of age	10 years post discharge	No Duty to Register
	§ 43.25	Sexual performance by a child	10 years post discharge	No Duty to Register
	§ 43.26	Possessing or promoting child pornography	10 years post discharge	No Duty to Register

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

Registrants who were 14 years of age or older at the time the offense resulting in a reportable conviction or adjudication was committed and the reportable conviction or adjudication is based on an adjudication of delinquent conduct (cont.)

Reportable convictions or adjudications where the registration period under Texas law *does not* exceed the minimum registration period under federal law

Texas Offense	Length of Duty to Register as a Sex Offender		
	Texas	SORNA	
§ 20.04(a)(4)	Aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually	10 years post discharge	Lifetime, Tier III
§ 21.11(a)(1)	Indecency with a child by contact where the victim has not attained the age of 16 years; the touching was not done through the victim's clothing and involved the victim's	10 years post discharge	Lifetime, Tier III
§ 22.011 ¹	Sexual assault	10 years post discharge	Lifetime, Tier III
§ 22.021	Aggravated sexual assault	10 years post discharge	Lifetime, Tier III
§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & the victim is younger than 12 years of age	10 years post discharge	Lifetime, Tier III
§ 25.02	Prohibited sexual conduct & the victim is at least 12 of age	10 years post discharge	Lifetime, Tier III
§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 20.04(a)(4), 22.011, 22.021 or 25.02	10 years post discharge	Lifetime, Tier III

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit:	§ 20.02	Aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually	10 years post discharge	Lifetime, Tier III
	§ 21.11(a)(1)	Indecency with a child by contact where the victim has not attained the age of 16 years; the touching was not done through the victim's clothing and involved the victim's genitals; and the touching was done (i) by force, (ii) by threatening or placing the victim in fear that any person will be subject to death, serious bodily injury or kidnapping, (iii) by rendering the victim unconscious, (iv) by administering a drug, intoxicant or other similar substance to the victim, (v) by threatening or placing the victim in fear, (vi) with a victim that is incapable of appraising the nature of the conduct, or (vii) with a victim that is incapable of declining participation or communicating unwillingness to	10 years post discharge	Lifetime, Tier III
	§ 22.011 ¹	Sexual assault	10 years post discharge	Lifetime, Tier III
	§ 22.021	Aggravated sexual assault	10 years post discharge	Lifetime, Tier III
	§ 22.021	Aggravated sexual assault, offense is solely based on the victim's age & the victim is younger than 12 years of age	10 years post discharge	Lifetime, Tier III
	§ 25.02	Prohibited sexual conduct & the victim is at least 12 of age	10 years post discharge	Lifetime, Tier III
§ 30.02(d)		Burglary of a habitation committed or engaged in with the intent to commit 20.04(a)(4), 22.011, 22.021 or 25.02	10 years post discharge	Lifetime, Tier III

1 The adjudicated offense is comparable to or more severe than 18 U.S.C.S. § 2241, aggravated sexual abuse, or was an attempt or conspiracy to commit such an offense

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

Registrants who were younger than 14 years of age at the time the offense resulting in a reportable conviction or adjudication was committed and the reportable conviction or adjudication is based on an adjudication of delinquent conduct

Reportable convictions or adjudications where the registration period under Texas law exceeds the minimum registration period under federal law

Texas Offense		Length of Duty to Register as a Sex Offender	
		Texas	SORNA
§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
§ 20.04(a)(4)	Aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually	10 years post discharge	No Duty to Register
§ 20A.02(a)(3)	Trafficking of persons	10 years post discharge	No Duty to Register
§ 20A.02(a)(4)	Trafficking of persons	10 years post discharge	No Duty to Register
§ 20A.02(a)(7)	Trafficking of persons	10 years post discharge	No Duty to Register
§ 20A.02(a)(8)	Trafficking of persons	10 years post discharge	No Duty to Register
§ 21.09	Indecent exposure—second violation, but not if the second violation results in deferred adjudication	10 years post discharge	No Duty to Register
§ 21.11(a)(1)	Indecency with a child by contact	10 years post discharge	No Duty to Register
§ 21.11(a)(2)	Indecency with a child by exposure	10 years post discharge	No Duty to Register
§ 22.011	Sexual assault	10 years post discharge	No Duty to Register
§ 22.021	Aggravated sexual assault	10 years post discharge	No Duty to Register
§ 25.03	Prohibited sexual conduct	10 years post discharge	No Duty to Register
§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11, 22.011, 22.021, 25.02, or 20.04(a)(4)	10 years post discharge	No Duty to Register
§ 33.021(c)	Online solicitation of a minor	10 years post discharge	No Duty to Register
§ 43.05(a)(1)	Compelling prostitution	10 years post discharge	No Duty to Register
§ 43.05(a)(2)	Compelling prostitution of a person younger than 18 years of age	10 years post discharge	No Duty to Register
§ 43.23(h)	Obscenity	10 years post discharge	No Duty to Register

Texas Offenses Tiered Under the Federal Adam Walsh Act (42 U.S.C. Section 16911 et seq.)

An attempt, conspiracy, solicitation, or solicitation of a minor to commit:	§ 43.25	Sexual performance by a child	10 years post discharge	No Duty to Register
	§ 43.26	Possessing or promoting child pornography	10 years post discharge	No Duty to Register
	§ 20.02	Unlawful restraint with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
	§ 20.03	Kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
	§ 20.04	Aggravated kidnapping with an Art. 42.015 affirmative finding that the victim was younger than 17 years of age	10 years post discharge	No Duty to Register
	§ 20.04(a)(4)	Aggravated kidnapping committed or engaged in with the intent to violate or abuse the victim sexually	10 years post discharge	No Duty to Register
	§ 20A.02(a)(3)	Trafficking of persons	10 years post discharge	No Duty to Register
	§ 20A.02(a)(4)	Trafficking of persons	10 years post discharge	No Duty to Register
	§ 20A.02(a)(7)	Trafficking of persons	10 years post discharge	No Duty to Register
	§ 20A.02(a)(8)	Trafficking of persons	10 years post discharge	No Duty to Register
	§ 21.11(a)(1)	Indecency with a child by contact	10 years post discharge	No Duty to Register
	§ 21.11(a)(2)	Indecency with a child by exposure	10 years post discharge	No Duty to Register
	§ 22.011	Sexual assault	10 years post discharge	No Duty to Register
	§ 22.021	Aggravated sexual assault	10 years post discharge	No Duty to Register
	§ 25.02	Prohibited sexual conduct	10 years post discharge	No Duty to Register
	§ 30.02(d)	Burglary of a habitation committed or engaged in with the intent to commit 21.11, 22.011, 22.021, 25.02, or 20.04(a)(4)	10 years post discharge	No Duty to Register
	§ 43.05(a)(1)	Compelling prostitution	10 years post discharge	No Duty to Register
	§ 43.05(a)(2)	Compelling prostitution of a person younger than 18 years of age	10 years post discharge	No Duty to Register
	§ 43.25	Sexual performance by a child	10 years post discharge	No Duty to Register
	§ 43.26	Possessing or promoting child pornography	10 years post discharge	No Duty to Register

The Council on Sex Offender Treatment

White Paper

Adam Walsh Act and the Sex Offender Registration and Notification Act

In May 2008 the Council on Sex Offender Treatment formed a task force to study the Adam Walsh Child Protection and Safety Act, 2006. The task force specifically focused on one of the key provisions of the act pertaining to the sex offender registration and notification. The task force was comprised of representatives from the Council, Texas Juvenile Probation Commission, Texas Department of Criminal Justice, Texas Youth Commission, Community Corrections and Supervision Departments, Texas Department of Public Safety and the Governor's Office. The purpose of the task force was to gather information that would facilitate the Council adopting a position on whether or not the State of Texas would be best served by implementation of the AWA.

Adam Walsh Child Protection and Safety Act 2006

The Sex Offender Registration and Notification Act (SORNA) is Title I of the Adam Walsh Child Protection and Safety Act, 2006 (AWA). It consists of a comprehensive revision of national standards for sex offender registration and notification. The SORNA standards were designed with the intent of strengthening and increasing the effectiveness of sex offender registration and notification for, "the protection of the public, and to eliminate potential gaps and loopholes under the pre-existing standards by means of which sex offenders could attempt to evade registration requirements or the consequences of registration violations." (Federal Register, Vol. 73, No 128/July 2, 2008). States had until July of 2009 to "substantially implement" SORNA. If implementation could not be accomplished two extensions of one year each could be requested. At this point Texas along with forty seven other states has yet to substantially implement SORNA requirements. Failure to comply will ultimately result in losing 10% of the federal Byrne Justice Assistance Grant to the state.

Brief Overview of Sex Offender Registration and Public Notification

To date there is little research that indicates sex offender registration and notification policies are accomplishing their stated purposes of reducing sexual crime and enhancing community safety. Several studies (Schram & Milloy, 1995; Adkins, Huff, & Stageberg, 2000; Walker, Madden, Vasquez, Van Houten & Ervin-McLarty, 2005; Washington State Institute for Public Policy, 2009, and Freeman & Sandler, 2009) looking at the effect of sex offender registration and community notification laws have found little or no impact on the reduction of sex crimes in communities where they have been implemented. The Association for the Treatment of Sexual Abusers in their 2007 response to Laura Rogers who at the time was the Director of the SMART office also cited several more recent studies that found counter-productive effects of community notification on low risk offenders (ATSA Response to SORNA, July 2007). At this juncture it appears that sex offender registration and notification laws have not had the impact for which legislators hoped. As the number of individuals on sex offender registries

grows it is reasonable to assume that the registries will become increasingly diluted in terms of communicating to the general public which offenders actually represent a significant risk to community safety. The Washington State Institute for Public Policy, 2009 cited nine rigorous studies published between 2005 and 2009 in their review of the research on the effectiveness of sex offender registration and notification laws on reducing recidivism among registrants. Only one of those studies found a statistically significant reduction in sexual and general reconvictions among registered sex offenders. The other eight studies either found that there was no statistically significant effect of registration on reducing recidivism or their findings were confounded by other factors. A recent study (Prescott and Rockoff, 2008) cited in Kernsmith, et. al, 2009, "found that in communities with a small number of registered offenders, such as those that include only highest-risk offenders, notification was effective in reducing recidivism. Registries that included a larger number of offenders actually resulted in increases in recidivism."

Thus far the research has not supported the idea that sex offender registration and notification has enhanced community safety by reducing recidivism among registered offenders. Despite the findings of the research, the Council believes it would be premature to suggest that sex offender registration and notification laws have no value in contributing to the safety of our communities. The passing of the AWA into law in 2006 has created an opportunity for the Texas Legislature and other stakeholders to consider the issue of sex offender registration and notification in our state and whether or not changes are needed in our current system. If changes in our current registration and notification laws are warranted would Texas be better served by implementing AWA, or by maintaining control over our state system, making adjustments to it as needed?

Areas of Concern

The Council on Sex Offender Treatment has identified three major areas that raise concerns about implementing AWA in Texas and they will be treated in order.

1. Implementing AWA will mean that sex offenders will be placed into a tier classification based on the title of their offense, rather than being classified by scientifically supported risk assessment methods.

Significant progress has been made over the past fifteen years in identifying risk factors that are correlated with sexual recidivism. Using the title of the offense of conviction rather than identifying actual risk factors that have been empirically shown to be associated with increased risk to re-offend is arguably a compromise rather than an enhancement of community safety. There is no research study to date that has found crime of conviction to be related to potential to re-offend. Offenders who have a number of factors that have been correlated with increased risk to recidivate could be classified in Tier I (lowest risk) either because of plea agreements, or because other factors demonstrated scientifically to be predictive of risk to re-offend are not considered. Likewise, individuals who statistically are at a lower risk to re-offend could be classified as a Tier III (highest risk) offender. Illustrative of this concern would be the case of a father with no prior criminal record of any kind who is convicted of Aggravated Sexual Assault of a Child after he digitally penetrates his ten year old daughter. His offense of conviction will classify him as a Tier

III high risk offender. Research in the field of sex offender treatment consistently has found that individuals who offend within their family are a lower risk to re-offend than individuals who commit offenses outside of their families. If this individual has no prior criminal history, no history of substance abuse, an intact support system, and other pro-social factors in his life (stable employment, long term marriage, no history of violence, etc) he would likely be a low risk to re-offend and would not warrant the level of monitoring that will be applied to a Tier III offender.

Additionally, the Adam Walsh Act would require a retroactive reassessment and re-tiering of every sexual offender in the state of Texas. As of May 2009 there were 57,050 registered offenders in Texas. This will be costly, time consuming and will undoubtedly result in some offenders who are currently classified as high risk based on research based actuarial instruments being reclassified into low or moderate risk categories. Likewise, many offenders who are currently classified as low risk will be shifted into the high risk category for no scientifically validated reason. A brand new study specifically drawing on the experiences of Ohio and Oklahoma, assessed the impact of the federal registration classification system on the distribution of individuals within state sex offender registries. The results of this research project indicate that the federal reclassification process produces a redistribution of registrants from lower SORN levels to higher ones and reveals statistically significant differences between newly reclassified "high-risk" individuals and those designated as high risk under prior registration classification systems. This study also indicates that juveniles and those potentially subject to AWA's retroactivity provisions may be disproportionately placed into the highest SORN tiers (Harris, Lobonov-Rostovsky and Levenson, 2010).

2. Implementing AWA will have significant ramifications for some juvenile offenders.

The final guidelines of AWA no longer require a Tier III classification for juveniles who have offended against someone who is under the age of twelve. Recently the supplemental guidelines published in the Federal Register on May 14, 2010 have allowed for,

"additional discretionary exemptions from public Web site disclosure to allow jurisdictions to exempt from public Web site disclosure information concerning sex offenders required to register on the basis of juvenile delinquency adjudications. This change creates a new discretionary, not mandatory, exemption from public Web site disclosure. It does not limit the discretion of jurisdictions to include information concerning sex offenders required to register on the basis of juvenile delinquency adjudications on their public Web site if they so wish.

The change regarding public Web site disclosure does not authorize treating sex offenders required to register on the basis of juvenile delinquency adjudications differently from sex offenders with adult convictions in other respects. Whether a case involves a juvenile delinquency adjudication in the category covered by SORNA or an adult conviction, SORNA's registration requirements remain applicable, see 42 U.S.C. 1691316, as do the requirements to transmit or make

available registration information to the national (nonpublic) databases of sex offender information, to law enforcement and supervision agencies, and to registration authorities in other jurisdictions, see 73 FR at 38060.

Jurisdictions are not required to provide registration information concerning sex offenders required to register on the basis of juvenile delinquency adjudications to the entities described in the SORNA Guidelines at 73 FR 38061, i.e., certain school, public housing, social service, and volunteer entities, and other organizations, companies, or individuals who request notification. This reflects an exercise of the Attorney General's authority to create exceptions to required information disclosure under 42 U.S.C. 16921(b). Accordingly, [[Page 27364]] if a jurisdiction decides not to include information on a juvenile delinquent sex offender on its public Web site, as is allowed by these supplemental guidelines, information on the sex offender does not have to be disclosed to these entities.

While these changes certainly represent appropriate adjustments to SORNA it is still the case that a juvenile age 14 or older, convicted or adjudicated delinquent for a serious sex crime could be classified as a Tier III offender subject to lifetime registration. It is stated in the SORNA guidelines that these juveniles would have to have been convicted of a sexual offense that is, "comparable to or more serious than" the federal Aggravated Sexual Abuse statute. Therefore the number of juveniles required to register would be limited to these more serious offenders. However, research on the rehabilitation of juvenile sex offenders indicates that even those convicted of more aggressive sexual assaults still have a very low recidivism rate. Adolescent offenders are not the same as their adult counterparts. Imposing a lifetime requirement of registering as a sex offender on a person based on a behavior they engaged in when they were a teenager is counter to the juvenile justice emphasis on rehabilitation. A best case scenario for a juvenile who is subject to registration and possible public notification under AWA is relief from that requirement after twenty-five years. If Texas does decide to substantially implement AWA the Council strongly recommends that we exercise the newly permitted discretion found in the recently published SORNA Supplemental Guidelines and not publish information about juvenile offenders on public Web sites. Subjecting an adolescent to public registration that includes the offender's name, address, the address of employment, the address of the school he/she attends, a photograph, a physical description, identification of the offense of conviction and the license plate number of any vehicle owned or operated by the juvenile will have a number of detrimental effects including, but not limited to social rejection, difficulties obtaining an education, problems associated with housing and employment, ostracism of the juvenile's entire family and possibly inadvertent identification of the victim if he/she is a family member.

A research project funded by a grant from The Center for Disease Control was conducted by the Medical University of South Carolina. The South Carolina Sex Offender Registration and Notification law has many of the same requirements for registering juvenile sex offenders as AWA. The studies from South Carolina found that placing juveniles on a public sex offender registry did not have an effect on deterring sex crimes committed by juveniles. Evidence from the series of studies that comprised this overall

project also suggest that prosecutors were hesitant to move forward with the prosecution of juveniles for sexual offenses if a conviction meant that the juvenile would have to register as a sex offender. There was a significant increase found in the number of cases that were pleaded down to a non-registered offense (Letourneau and Bandyopadhyay, 2008; Letourneau, et.al 2009).

It is generally accepted in the field of sexual offender treatment, based on numerous research studies, that adolescent perpetrators are distinctly different from adult sex offenders. Juvenile sex offenders have a very low recidivism rate and are amenable to treatment (Hunter, 1999) Subjecting juvenile sex offenders to a public registry implies that they are no different than adult offenders. This is simply not accurate information to convey to the public.

3. Implementing AWA will be costly as resources that could be used to monitor high risk offenders will be utilized unnecessarily with offenders who represent a low risk to re-offend.

According to the National Conference on State Legislatures, failure to substantially implement AWA will cost Texas 2,192,000 in federal funding in 2011. The cost of implementing AWA will be substantially greater. Fiscal analyses in several other states have yielded the following projected costs of implementing AWA.

California	38,000,000
Florida	3,226,487
New Jersey	5,100,000

The Justice Policy Institute utilizing a formula derived from the Virginia Department of Planning and Budget estimated implementation costs for all fifty states. The estimate for costs associated with implementation of AWA in Texas that they published was 38,771,924.00. The amount that represented the 10% reduction in Byrne Fund Grants that Texas would be penalized for failure to comply with AWA was cited as 1,404,571.00

The federal government has **not allocated any consistent funding to underwrite the substantial cost that state and local governments would incur** if Texas were to attempt to come into compliance with the Adam Walsh Act.

While there has yet to be a fiscal analysis done in Texas, it is reasonable to anticipate significant costs associated with implementation of AWA. Not only are there financial costs, but the allocation of limited resources in the form of law enforcement personnel need to be considered as well. The Austin Police Department has identified three areas that will be impacted by AWA as it relates to sex offender registration and notification. First, more crimes will require notification. Second, the length of registration for the vast majority of offenders will increase. Third, there will be an enormous increase in the number of times a registered offender will have to make a personal appearance at the police department. Currently 9.1% of registered offenders in the city of Austin are required to report quarterly. If AWA is implemented in Texas, that number will increase to 78%. This will increase the

number of personal appearances to validate registration information from 1593 to 4433 in Austin alone, a 178% increase per year. Instead of having 7 registration appointments a day to work with, the number will triple to 21 such appointments daily (Moss, 2010). The same increases in cost and workload can certainly be anticipated in virtually every jurisdiction in Texas. If it is the case that many of these registered offenders do not represent a high or even moderate risk to re-offend then this allocation of time, energy and money clearly does not enhance community safety, and arguably detracts from it.

Other costs that can be anticipated in the event AWA is implemented in Texas include court and administrative costs associated with the prosecution of offenders who fail to comply with registration requirements, the need for additional jail and prison space, the hiring of additional personnel to monitor offenders' compliance with registration and legislative costs associated with developing new laws.

Other Considerations

In reviewing the most current research regarding AWA and SORNA, other information was found that should be considered as a decision is made in Texas regarding whether or not the state should implement the federal registration program.

1. Notification laws seem to assume that the majority of sexual offenses are committed by strangers. The research is clear. The overwhelming majority of sexual offenses are committed by family members, friends, or acquaintances of the victim.
2. Public notification will likely have the unintended effect of implicitly identifying the victim of a sexual offense in many cases of incestuous abuse.
3. Registration and notification has been shown to have a de-stabilizing effect on lower risk offenders (Mercado, et. al, 2008) Research on criminal rehabilitation has found that stable living situations, steady employment, and a healthy network of accountability and support are strongly correlated with success. Registration and notification has significantly impacted low risk offenders' capacity to maintain stability in the community. If it is the case that many offenders who are actually a low risk to recidivate based on scientifically derived risk assessments, will be re-classified as high risk Tier III offenders with the implementation of AWA, there could be broad-based destabilization within large segments of registered offenders.
4. A number of legal challenges to SORNA have already surfaced. Consider the following.

In *Wallace v. State* (2009), the Indiana Supreme Court held that the retroactive application of SORNA to a defendant sentenced prior to the enactment of any registration requirements violated the ex post facto clause of the Indiana Constitution.

In *Kentucky v. Baker* (Oct. 1, 2009), the Kentucky Supreme Court held that KRS 17.545, which restricts where registered sex offenders may live, could not be applied to those who committed their offenses prior to July 12, 2006, the effective date of the statute. The

court noted that the retroactive application of the statute was an ex post facto punishment, which violated Article 1, Section 10 of the United States Constitution and Section 19(1) of the Kentucky Constitution.

The Ninth Circuit Court of Appeals declared in U.S. v. Juvenile Male, No. 07-30290 (9th Cir. Sept. 10, 2009) that part of the federal Sex Offender Registration and Notification Act is unconstitutional as applied to former juvenile offenders "We must decide as a matter of first impression — in our court and in any other circuit court — whether the retroactive application of SORNA's provision covering individuals who were adjudicated juvenile delinquents because of the commission of certain sex offenses before SORNA's passage violates the Ex Post Facto Clause of the United States Constitution. In light of the pervasive and severe new and additional disadvantages that result from the mandatory registration of former juvenile offenders and from the requirement that such former offenders report in person to law enforcement authorities every 90 days for 25 years, and in light of the confidentiality that has historically attached to juvenile proceedings, we conclude that the retroactive application of SORNA's provisions to former juvenile offenders is punitive and, therefore, unconstitutional."

In a narrowly tailored decision, the Supreme Court of Ohio ruled as unconstitutional two sections of the Ohio Adam Walsh Act (AWA) that authorize the state attorney general to reclassify sex offenders who had already been classified by judges under the previous registration law. The Court held that certain provisions of AWA violate the separation-of-powers doctrine of the state constitution. This decision leaves in place all of the law enforcement registration and community notification requirements of the AWA applicable to sex offenders who were classified on or after the Jan. 1, 2008, effective date of that law, and reinstates the pre-AWA registration and community notification requirements that judges had ordered offenders to comply with prior to implementation of AWA in Ohio.

Council Recommendations

Based on the concerns cited above, **the Council on Sex Offender Treatment recommends that the state of Texas not implement the Adam Walsh Act.** The Council is of the opinion that the citizens of Texas will be better served by maintaining our own sex offender registry and sharing that information with other states, rather than comply with the SORNA requirements of the Adam Walsh Act. We believe that a research-based approach to risk assessment is a substantially better method of identifying high risk sex offenders than classifying them based on offense title. We are also of the opinion that the interests of our communities are best served by allocating resources to the management of higher risk offenders rather than distributing those resources across all risk categories of offenders. For that reason, the Council has been in the process of fulfilling its mandate from the 79th Legislature (HB 867 and HB 2036) to develop a methodology for the de-registration of some sex offenders in the state. Not every sex offender in Texas will be eligible to apply for de-registration. The offenders who would be eligible for consideration in the deregistration process would be limited to those who have been convicted or placed on deferred adjudication probation for a select group of offenses still being considered by the Council. An individual

would qualify for removal from public sex offender registration if that individual committed one of the offenses that are eligible for de-registration; successfully completed a sex offender treatment program; discharged his sentence; committed no new offenses; and received low scores on empirically-based risk assessment instruments approved by the Council (Art. 62.401 et. seq., Code of Criminal Procedure). The Council's position is that this would result in a sex offender registry that more accurately informs the community of higher risk offenders. It would also contribute toward more efficient management of offenders in the community, allocating personnel and funding to the sub-population of offenders who represent a greater threat to recidivate.

1. The AWA should not be implemented by the State of Texas.
2. Texas should continue to work toward enhancing communication between states regarding registered sex offenders who represent a significant risk to community safety.
3. Texas should continue to develop strategies for the effective management of sexual offenders in the community that prioritize the safety of our citizens. Research-based risk assessment instruments should be used to identify sex offenders who are statistically at a high risk to re-offend. The Council is of the opinion that community safety is enhanced when time, money and personnel are directed toward monitoring high risk offenders.

Respectfully Submitted,

Texas Council on Sex Offender Treatment
Liles Arnold, Chairman

References

Adkins, G., Huff, D., & Stageber, P. (2000) *The Iowa Sex Offender Registry and Recidivism*. Des Moines: Iowa Department of Human Rights

Association for the Treatment of Sexual Abusers (2007) *Comments on Proposed Guidelines to Interpret and Implement the Sex Offender Registration and Notification Act*.

California Sex Offender Management Board, *Adam Walsh Act*

Colorado Sex Offender Management Board. (2008) *White Paper on the Adam Walsh Child Protection and Safety Act of 2006*

Federal Register, Vol. 73, No 128/July 2, 2008

Federal Register, Vol. 75, No. 93/May 14, 2010

Freeman, N.J., & Sandler, J.C. (2009) *The Adam Walsh Act: A False Sense of Security or an Effective Public Policy Initiative*. Criminal Justice Policy Review, Vol. 10, pp. 1-19

Harris, A., Lobanov-Rostovsky, C., & Levenson, J. (2010). *The Effects of Transitioning to the Adam Walsh Act*. Criminal Justice and Behavior, Vol. 37, pp. 503-519.

Hunter, J. (1999) *Understanding Juvenile Sex Offenders; Research Findings and Guidelines for Effective Management and Treatment*. Juvenile Forensic Evaluation Resource Center. Charlottesville, Virginia: Institute of Law, Psychiatry and Public Policy

Kernsmith, P.D., Comartin, E., Craun, S.W., & Kernsmith, R. K. (2009) *The Relationship Between Sex Offender Registry Utilization and Awareness*. Sexual Abuse: A Journal of Research and Treatment, Vol. 21, No. 2, pp. 181-193.

Letourneau, E. J., Bandyopadhyay, D., Sinha, D., & Armstrong, K.S. (2009) *The Effects of Sex Offender Registration Policies on Juvenile Sexual Recidivism*. Criminal Justice Policy Review, Vol. 20, pp. 136-153.

Letourneau, E.J. & Armstrong, K. S. (2008) *Recidivism Rates for Registered and Non-Registered Juvenile Sex Offenders*. Sexual Abuse: A Journal of Research and Treatment, Vol. 20, pp. 393-408.

Mercado, C.C., Alvarez, S., & Levenson, J. (2008) *The Impact of Specialized Sex Offender Legislation on Community Reentry*. Sexual Abuse: A Journal of Research and Treatment, Vol. 20, No. 2, pp. 188-205.

Moss, Gregory (2010) *Presentation at the 18th Annual Conference on the Management of Adult and Juveniles with Sexual Behavior Problems*. February 15, 2010 San Antonio, Texas

Prescott, J. & Rockoff, J. (2008) *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?* (Working Paper No. 08-006) Ann Arbor: John M. Olin Center for Law and Economics, University of Michigan Law School

Schram, D.D. & Milloy, C.D (1995) *Community Notification: A Study of Offender Characteristics and Recidivism.* Washington State Institute for Public Policy

Walker, J.T., Madden, S., Vasquez, B E, Van Houten, A.C., & Ervin-McLarty, G (2005) *The Influence of Sex Offender Registration and Notification Laws in the United States.* Little Rock: Arkansas Crime Information Center

Washington State Institute for Public Policy (2009) *Does Sex Offender Registration and Notification Reduce Crime? A Systematic Review of the Research Literature*

TAC SUBCHAPTER L. EARLY TERMINATION FOR CERTAIN PERSONS' OBLIGATION TO REGISTER.

§810.301. Introduction.

(a) General. The provisions of this subchapter govern the procedures relating to the deregistration of individuals on the public registry for sex offenders in the State of Texas.

(b) Construction. These sections cover definitions, criteria for deregistration; guidelines for conducting deregistration assessments; and, the due process for determining if a registrant may deregister.

§810.302. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act--Code of Criminal Procedure, Chapter 62.401 et. seq. Termination of Certain Persons' Obligation to Register.

(2) Contact with Registrant: Clinical Interview--Face to face interview between the Licensed Sex Offender Treatment Provider and the Registrant.

(3) Deregistration--The early termination of an individual's obligation to register.

(4) Deregistration Candidate--An individual required to register who is undergoing a deregistration evaluation.

(5) Deregistration Criteria--The criteria established by the council to determine if a registrant is eligible for early termination of the obligation to register.

(6) Evaluation Specialist--A licensed sex offender treatment provider who is approved by the council to conduct deregistration evaluations.

(7) Instant Offense--The sexual offense that resulted in the registrant being required to be listed or included on the sex offender registry.

(8) Public Registry--The public registry of sex offenders in the State of Texas which is maintained by the Texas Department of Public Safety.

(9) Registrant--An individual who is required under Code of Criminal Procedure, Chapter 62, in the State of Texas.

§810.303. Administration of the Act. The council is responsible for providing the appropriate and necessary guidelines for deregistration including identifying who can deregister, the method where by registrants are evaluated for deregistration and the due process that must be followed to attain deregistration.

§810.304. Deregistration Eligibility. The council shall establish criteria to determine an individual's eligibility for early termination from the obligation to register. The council shall publish a list of eligibility criteria. Prior to participating in a deregistration evaluation, the registrant must obtain approval from the council that he or she is eligible for deregistration.

§810.305. Deregistration Decision Criteria. The council shall establish deregistration evaluation criteria to determine the risk level of the registrant.

§810.306. Evaluation Specialist. The council shall contract with licensed sex offender treatment providers to provide deregistration evaluation services.

§810.307. Deregistration Methodology. The Deregistration Evaluation Specialist shall submit the candidate's deregistration evaluation report to the council. The council shall review the report and determine if the report conforms to council criteria. The council shall certify reports that meet council criteria and send the certified report back to the attorney.

§810.308. Protocol Compliance. The council or its designee shall review each candidate's application and deregistration evaluation report in order to insure that these documents are in compliance with approved methodology and procedures. The council or its designee shall insure that all established requirements have been met by the candidate prior to approving the candidate to undergo a deregistration evaluation. The council or its designee shall also ensure that established deregistration evaluation criteria have been met prior to providing the candidate with the written evaluation report.