

Strategies for Improving Outcomes for Juveniles Adjudicated of Sexual Offenses in Texas

December 1, 2016

IJSXO  TASK FORCE ON IMPROVING
OUTCOMES FOR JUVENILES
ADJUDICATED OF SEXUAL OFFENSES




H.B. 1144 REPORT

Strategies for Improving Outcomes for Juveniles Adjudicated of Sexual Offenses in Texas

December 1, 2016

*This report contains findings and recommendations
regarding juvenile sex offender laws in Texas.*

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OUTCOMES FOR JUVENILES
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TABLE OF CONTENTS

EXECUTIVE SUMMARY	3
Introduction	5
A. Background	5
B. Committee Composition and Duties	5
C. Advisory Committee Methodology	6
Juvenile Sex Offenders	7
A. A Brief Perspective on Juvenile Sex Offender Laws in Texas	7
B. National Policy Initiatives	8
C. Public Safety	11
Task Force Milestones	11
A. Juvenile Registration Statutes	12
B. Written Testimony	12
C. Court Procedures and Programs	13
D. Practitioner Training	13
E. Program Registry and Services	14
F. Mental Health, Counseling and Treatment Provider Services	15
G. Statistical Data Review	17
H. Victims Issues	19
SUMMARY OF FINDINGS & RECOMMENDATIONS	23
Conclusion	24
PROPOSED LEGISLATION	26
COMMENTARY	52
APPENDICES	56
A. House Bill 1144 (84 th R.S.)	57
B. Active Registrant Profile: DPS Data (November 22, 2016)	62
C. Task Force Contact Roster	63
D. Witness List	64
E. SORNA Federal Register Notice (August 1, 2016)	67
F. Federal Advisory Committee on Juvenile Justice Report (May 2016)	75



EXECUTIVE SUMMARY

The Texas Juvenile Justice Code legislative purposes underscore an inherent tension in the goals of the juvenile justice system. The guiding principles of law expressed in Section 51.01 of the Family Code endeavor to strike a careful balance regarding the protection and safety of the public; the administration of appropriate punishment for the commission of unlawful acts of delinquency; the attainment of rehabilitative goals; and the removal of the long-term consequences of the taint of criminality.

Over the past twenty-five years, sex offender laws in Texas have reflected an evolution of public perception. Many of the prevailing views have largely been influenced by high profile cases that resulted in the passage of adult and juvenile sex offender registry laws around the country. In recent years, practitioners, academicians, treatment providers, public safety and advocacy organizations have presented juvenile justice and clinical research that supports the notion that juvenile sex offenders are different. Studies indicate that the commission of delinquent sex offenses is more likely to be experimental or indicative of a history of sexual abuse or dysfunction rather than violent or predatory in nature. In addition, research reinforces that adolescents have low recidivism rates and are more responsive to treatment and rehabilitative services than adults.

Notably, policy trends indicate that federal and state lawmakers recognize that the detrimental long-term effects to juveniles and their families outweigh, in most cases, the purported benefits of public registration. In written testimony, University of Texas Law Professor and LBJ School of Public Affairs Lecturer, Dr. Michele Deitch, described the collateral consequences for persons listed on the public registry as a result of a delinquency adjudication stating that “the registry affects their school, home, and work lives.”¹ To that end, practitioners in Texas and around the nation have urged policymakers to reexamine the statutory framework for court procedures, juvenile sex offender registration and the provision of specialized rehabilitative programs and services for this population of youth in Texas.

The Task Force on Improving the Outcomes for Juveniles Adjudicated of Sexual Offenses was established under House Bill 1144 (84th R.S.) to study issues and make policy recommendations on ways to improve the outcome for juvenile sex offenders in Texas while ensuring public safety and accountability to victims. This comprehensive mandate of the 84th Texas Legislature has emerged at a time when policymakers, advocates and practitioners around the country have questioned the

¹ Michele Deitch, J.D., *Youth on the Sex Offender Registry*, Written Testimony submitted to the Task Force on Improving Outcomes for Juveniles Adjudicated for Sexual Offenses, March 4, 2016.

efficacy of registration as a public response to the rehabilitative needs of juveniles. Specifically, the work of the task force focuses on the population of juvenile sex offenders who are subject to the jurisdiction of the juvenile court for conduct that constitutes an offense for which registration as a sex offender is required under Chapter 62, Code of Criminal Procedure.²

The task force convened a series of meetings over the course of one year in order to conduct an extensive assessment of Texas sex offender laws. The principles of consensus decision-making were used to develop conceptual recommendations and proposals which were evaluated and categorized based on the appropriate response strategy.³ The program of work involved an examination of Texas statutes and laws of other state jurisdictions, scholarly research articles, witness testimony and stakeholder input. This work has culminated in the *House Bill 1144 Report: Strategies for Improving Outcomes for Juveniles Adjudicated for Sexual Offenses in Texas* (December 1, 2016).

Briefly, the task force presents the following findings on the issues pertaining to juveniles adjudicated of sexual offenses.

KEY FINDINGS

- Statutory revisions to sex offender registration laws and procedures regarding juveniles adjudicated for delinquent sexual offenses are necessary to improve outcomes based on recommended national best practices, empirical research and public safety objectives.
- Information on sex offender programs, services and treatment providers should be available through a statewide clearinghouse.
- There are inconsistencies among treatment programs for juveniles and variations in the practice and quality of training for Licensed Sex Offender Treatment Provider (LSOTP) applicants.
- There are crucial gaps in the availability of continuing education and training for juvenile justice stakeholders and practitioners.

² House Bill 1144 (84th R.S.) 2015.

³ The task force was asked to categorize and prioritize ideas to determine the appropriate responsive action or strategy required to accomplish recommendations. For example, as concepts were presented, the workgroup determined whether legislative amendments, rule adoption, training, statewide best practices or policy changes should be considered to implement the conceptual idea.

- Stronger emphasis should be placed on the collection of Texas-specific juvenile sex offender data in order to track, manage and evaluate the consistency of court dispositions and the effectiveness of programs and services.

Introduction

Background. In 2015, the 84th Texas Legislature established the Task Force on Improving the Outcomes for Juveniles Adjudicated of Sexual Offenses pursuant to HB 1144. This bill mandated an examination of juvenile court procedures and programs, sex offender registration, mental health services and statistical information on victims of abuse, neglect and family violence in Texas. The legislation required the task force to submit a report of its findings and recommendations to the Governor, Lt. Governor, legislative leadership, standing committees with criminal justice jurisdiction, and the executive directors of the Texas Juvenile Justice Department, Texas Department of Criminal Justice, as well as other agencies represented on the task force no later than December 1, 2016.

Committee Composition and Duties. HB 1144 specified 14 categories of designated representatives from the Texas Juvenile Justice Department, the Department of Family and Protective Services, Department of Public Safety, Council on Sex Offender Treatment and gubernatorial appointees such as a public defender, sex offender treatment provider, academic researcher, probation officer as well as judges, prosecutors, advocates, and law enforcement from rural and urban counties and municipalities.⁴ The legislation also required the governor to designate a member of the task force to serve as presiding officer. Harris County District Attorney Devon Anderson was designated to fulfill this role. The presiding officer and the task force were directed to fulfill the duties outlined in the legislation and encouraged to leverage diverse perspectives by consulting with relevant experts and advisors including juvenile sex offenders, family members, mental health experts, and school district and higher education administrators.

⁴ H.B. 1144, 84th Legis. Sess. (2015). The task force is composed of the following members: (1) the executive director of the Texas Juvenile Justice Department or the executive director's designee; (2) the commissioner of the Department of Family and Protective Services or the commissioner's designee; (3) one representative designated by the Crime Records Service of the Department of Public Safety who has experience with the department's sex offender registry; (4) one representative designated by the Council on Sex Offender Treatment; (5) one representative designated by Children's Advocacy Centers of Texas; (6) one representative designated by the Texas Association for the Protection of Children; (7) one representative designated by Texans Care for Children; (8) one private provider of juvenile sex offender treatment from a rural county and one private provider of juvenile sex offender treatment from an urban county, appointed by the governor; (9) one judge from a rural county and one judge from an urban county, appointed by the governor; (10) one law enforcement official from a rural county and one law enforcement official from an urban county, appointed by the governor; (11) one prosecutor from a rural county and one prosecutor from an urban county, appointed by the governor; (12) one juvenile probation officer from a rural county and one juvenile probation officer from an urban county, appointed by the governor; (13) one juvenile public defender from a rural county and one juvenile public defender from an urban county, appointed by the governor; and (14) one academic researcher from an accredited university who specializes in juvenile justice.

Advisory Committee Methodology. The Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses held its organizational meeting on December 1, 2015, and convened a series of six subsequent meetings through October 28, 2016. The initial orientation focused on workgroup duties, legislative charges, time commitment and the overall scope of work. In addition, the committee engaged in facilitated sessions to assess the statutes governing juvenile sex offender laws in Texas. Specifically, the committee articulated its broad legal and policy vision by examining:

- 1) strengths and weaknesses of sex offender proceedings and court disposition practices;
- 2) issues associated with juvenile sex offender registration;
- 3) ways to maximize stakeholder input; and
- 4) strategies for achieving its stated goals.

The characteristics of the proposed Texas model began to take shape by applying the principles of consensus decision-making. Responses were charted to identify challenges, benefits, gaps, successes and barriers. Task force members also discussed existing administrative practices, available staffing, court procedures, fiscal resources, and the infrastructure for the provision of treatment and clinical services.

As work progressed, smaller subcommittees⁵ were formed (i.e. concept subgroups) to continue assignments between meetings and to encourage information-gathering. The original concepts were narrowed and a response mapping methodology was used to focus on remaining priorities and “wish list” items. In keeping with the consensus model, subgroups were tasked with developing conceptual recommendations and preliminary legislative proposals for review and deliberation by the subgroups and the full advisory committee. Concept groups convened independently on an *ad hoc* basis or via conference calls to develop and evaluate viable proposals for referral to the legislative drafting team. A legislative drafting team⁶ was formed later in the process to refine and prepare legislative proposals.

The task force also conducted extensive information-gathering to review articles⁷, national trends, a matrix⁸ of sex offender laws in all state jurisdictions and federal laws. In support of the task force efforts, the Texas Juvenile Justice Department Research Division provided an overview of juvenile referral data derived from the case management systems of juvenile probation departments

⁵ Subcommittees (i.e., subgroups) were formed to work on key areas linked to the charges of House Bill 1144. Task force members volunteered to participate in the following subgroups: Subgroup A – Court Procedures and Programs; Subgroup B – Sex Offender Registration; and Subgroup C – Mental Health Counseling and Services. All members were assigned to participate in Subgroup D relating to Statistical Data on Sex Offenders and Victims of Abuse or Neglect and Family Violence.

⁶ Seven members served on the legislative drafting team. [D. Anderson (Chair), D. Rucker, J. Jarrett, K. Johnson, M. Moore, and A. Palmer].

⁷ Online and bibliographic resources and online resources were provided to advisory committee members.

⁸ Interstate Commission for Juveniles, State Sex Offender Matrix, <http://www.juvenilecompact.org/Resources/SexOffenderMatrix.aspx> (Last Accessed November 17, 2016).

and state facilities. Each member of the task force, through his or her participation and input, shared in authoring the findings and recommendations contained in this report.

Juvenile Sex Offenders

A Brief Perspective on Juvenile Sex Offender Laws in Texas. Nearly twenty-five years ago, Texas enacted sex offender registration laws that applied to adults and juveniles before many other states around the country. In the years that followed, federal legislation mandated the creation of state registration programs,⁹ notification requirements¹⁰ and national identification and tracking¹¹ of sex offenders. By 2005, the legislature reorganized Article 62 of the Code of Criminal Procedure but made only a few substantive amendments to Subchapter H relating to the procedural requirements for juvenile sex offender registration.¹²

Under Texas law, juvenile courts have discretion to decide whether a child (age 10 and under 17) with a reportable adjudication will be required to register.¹³ Registration is automatic unless a juvenile requests the court to excuse or defer the decision. The juvenile court may exempt all registration; require full registration accessible to the public online; non-public registration accessible only to criminal justice agencies; or defer the registration decision until after completion of court-ordered sex offender treatment. Currently, the prevailing view is that many juvenile courts defer registration when requested. The Department of Public Safety (DPS) maintains the centralized sex offender database, known as the *Texas Public Sex Offender Registry* that includes information on juveniles and adults under court-ordered public registration.¹⁴

The initial obligation to register is triggered when a child is placed on probation or upon release from a TJJD state institution or a secure local facility.¹⁵ If placed on the registry, the juvenile is required to verify proof of identity and residence with the local law enforcement agency in any municipality or county where he or she resides or intends to reside for more than 7 days.¹⁶ Primary registration authority is determined by the Department of Public Safety based on the location of the person's residence, work or school.¹⁷ A registered juvenile is also required by law to submit a DNA sample.¹⁸ Verification must be renewed on an annual basis within 30 days before or after the

⁹ H.R. 3355 --103rd Congress: Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act of 1993.

¹⁰ H.R. 2137 --104th Congress: Megan's Law, 1995.

¹¹ Public Law 104 - 236 - Pam Lychner Sexual Offender Tracking and Identification Act of 1996.

¹² H.B. 867, 79th Legis. Sess. (2005)

¹³ Article 62.001(5), Code of Criminal Procedure lists the reportable adjudications of delinquent conduct or convictions. This statute provides an extensive list of reportable offenses and applies to delinquent conduct adjudications for substantially similar offenses in another state, foreign country or under federal law, if the offender resides in Texas.

¹⁴ The Texas Public Sex Offender Registry is available on the Texas Department of Public Safety website <https://records.txdps.state.tx.us/sexoffender/> (Last Accessed November 17, 2016).

¹⁵ Article 62.053, Code of Criminal Procedure.

¹⁶ Article 62.051(a) and (f), Code of Criminal Procedure.

¹⁷ Article 62.004, Code of Criminal Procedure.

¹⁸ Section 54.0405(a)(2)(B), Family Code.

registrant's birthday. Annual verification ends when the juvenile's duty expires 10 years after the disposition date, discharge from probation, TJJD parole, or completion of any determinate sentence parole term.¹⁹ Juveniles who have been certified as an adult are never subject to lifetime registration even after conviction or deferred adjudication.²⁰ A juvenile registrant may be charged with a state jail felony or a higher penalty for a repeat offense for failure to comply with the various registration, verification and notification requirements.²¹ The juvenile court, upon petition, may hold a hearing to unregister (exempt) or deregister (terminate an existing duty to register based on a current risk assessment). An adjudicated juvenile who is exempt is not required to register and may not be prosecuted for not complying with registration obligations. Regarding the unregistration decision, the court must find that public safety would not be increased by registration and that the harm to the juvenile and family outweighs the increased protection to the public. When the duty to register expires, records may be removed from the DPS registry²² and are eligible to be sealed.²³

National Policy Initiatives. After the passage of the Adam Walsh Child Protection and Public Safety Act of 2006, Texas was among a number of states that opted not to substantially implement the comprehensive federal law by the 2011 deadline.²⁴ The Sex Offender Registration and Notification Act (SORNA)²⁵ included Section 111(8) which applied to juvenile sex offenders.²⁶ Policymakers expressed concerns that compliant statutory changes in Texas would eliminate the juvenile court's discretion regarding the registration decision and require other extensive amendments to Article 62 of the Code of Criminal Procedure. Cost was also cited as a significant barrier to full implementation.²⁷ In 2016, nearly ten years later, some of the uncertainties regarding state compliance have been alleviated by recent clarifications outlined in an August 2016 Federal Register Notice.²⁸ Specifically, the notice made clear that laws in state jurisdictions that did not meet SORNA guidelines may still be considered to have substantially complied if state policies and practices promote public safety in a manner that does not undermine the overall SORNA objectives.

In addition to SORNA laws, a number of published reports and studies have sparked national policy initiatives regarding the disparate impact of registration laws on juvenile offenders such as the Justice Policy Institute's *Registering Harm: How Sex Offense Registries Fail Youth and Communities* and *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US* by the national advocacy organization Human Rights Watch. In addition, *Life on the List*, a Texas

¹⁹ Article 62.101, Code of Criminal Procedure.

²⁰ Article 62.101(a), Code of Criminal Procedure.

²¹ Article 62.102, Code of Criminal Procedure.

²² Articles 62.251 and 62.404, Code of Criminal Procedure.

²³ Section 58.003(n), Family Code,

²⁴ All state jurisdictions were required to enact laws to comply with SORNA by July 27, 2011.

²⁵ Adam Walsh Child Protection and Safety Act of 2006, Title 1: Sex Offender Registration and Notification Act. Public Law No. 248.109, 109th Congress.

²⁶ Section 111(8) of the Adam Walsh Act makes sex offender registration requirements applicable to juveniles who have been adjudicated delinquent for a reportable sex offense. See also 42 U.S.C. §16911 and 42 U.S.C. §16911(8).

²⁷ Tex. S. Criminal Justice Interim Committee, Interim Charges Report, 82nd Leg., R.S. (December 10, 2010).

²⁸ Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, 81 Fed. Reg. 147 (August 1, 2016). Federal Register: Notices. August 2016. See Appendix E & F.

Observer news story was featured prominently in the national conversation. Specifically, *Raised on the Registry* presented case stories focused on the detrimental impact of registration laws on children found guilty in juvenile and criminal proceedings in twenty states, including Texas. The article asserts that juvenile sex offender registration does not promote public safety, causes harmful long-term punitive and collateral consequences to youth, and poses an administrative burden on law enforcement to monitor registrants without regard to their level of dangerousness.²⁹ Some have suggested that the recent federal guidelines and legislative initiatives around the country have emerged from the recommendations contained in these published reports.

The findings of the Federal Advisory Committee on Juvenile Justice, a consultative body of the Office of Juvenile Justice and Delinquency Prevention, were also considered by the task force.³⁰ The federal advisory committee called for changes to existing federal law to “explicitly exempt juveniles (all persons below the age of 18 at the time of their offense) from all sex offender registration, community notification, and residency restriction laws.” Although the recommendations on the federal level were far-reaching, the Texas task force identified important strengths in the current discretionary registration model that best serve the unique perspectives of the state and its rehabilitative and public safety goals.

In written testimony submitted to the task force, Dr. Michele Deitch provided a comparative look at registration practices in other state jurisdictions.

“Overall, there are 35 states that require juveniles to register or comply with notification laws. In 16 of the 35, juveniles’ registration information is not publicly accessible. In 17 of those 35 states, juveniles adjudicated delinquent do not have to conform to requirements for registering adults. In 7 of those states, juvenile sex offenders can be required to register for life. In contrast, 17 states do not subject juveniles to any registration requirements.”³¹

National research and extensive evidence-based studies have influenced the development of policy and best practices around the country. Research regarding effective mental health treatment approaches, counseling interventions, and risk assessment methodologies for youth who have sexually offending behaviors has been shaped by the efforts of professionals, organizations and

²⁹ Nicole Pittman, “Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US,” Human Rights Watch (2013).

³⁰ Federal Advisory Committee on Juvenile Justice Research/Dual Status Subcommittee Report. (May 2016). http://www.facjj.org/docs/2016May/FACJJ_Research_and_Publications_Subcommittee_Recommendation_Final.pdf (Last Accessed November 17, 2016).

³¹ Michele Deitch, J.D., “Youth on the Sex Offender Registry,” Written Testimony submitted to the Task Force on Improving Outcomes for Juveniles Adjudicated for Sexual Offenses, March 4, 2016. Testimony sourced to: Nicole Pittman and Quyen Nguyen, A Snapshot of Juvenile Sex Offender Registration and Notification Laws: A survey of the United States (2011), available: http://www.njjn.org/uploads/digital-library/SNAPSHOT_web10-28.pdf.

academic associations. In particular, the literature review by the task force revealed the availability of noteworthy resource information on the adolescent brain, juvenile sex offender rehabilitation and recidivism, effective treatment approaches and risk assessment methodologies. Interestingly, Texas-specific literature regarding the linkage of sexual offending behaviors of youth who were victims of or experienced traumatic events such as abuse or domestic violence was sparse and difficult to obtain.³² These research findings have led many practitioners to question the therapeutic treatment value of public registration.

Dr. Jane Silovsky, Ph.D., Director of the National Center on Sexual Behavior in Youth and University of Oklahoma Professor was invited to provide testimony to the task force on the center's work on community-based services for youth with problematic sexual behavior. Dr. Silovsky laid out the key components of effective community-based programs and provided supporting information such as *Our Minds Are Made Up – Don't Confuse Us With the Facts: Commentary on Policies Concerning Children With Sexual Behavior Problems and Juvenile Sex Offenders*; the *National Juvenile Justice Network: Fact Sheet on Youth Who Commit Sex Offenses*; and *Adolescents Who Have Engaged in Sexually Abusive Behavior: Effective Policies and Practices*, an article published by the Association for the Treatment of Sexual Abusers (ATSA).³³ Similarly, invited witness Dr. Matthew Ferrara, an Austin-based psychologist, described his work implementing sex offender treatment programs and ongoing research on the causes and prevention of child sexual abuse. Dr. Ferrara also shared *The Costs and Benefits of Subjecting Juveniles to Sex Offender Registration and Notification*, an article prepared by the R Street Institute, a Texas and DC- based policy research organization. The article provides a cost-benefit analysis of the application of registration and notification laws to juvenile sex offenders. The report favors reform alternatives that include the exemption of "certain fragments of registrants...due to offenses committed as juveniles."

The task force also received testimony regarding a pilot sex offender diversion project in Tarrant County³⁴. Project SAFeR is a research-based early intervention model that targets youth at risk of sexually inappropriate behavior. Stacey Lewis, Counseling Services Supervisor MSW, LCSW and Margaret Cohenour, MSW, LCSW Director of Counseling with the Lena Pope Home, described the multidisciplinary efforts of the Tarrant County Juvenile Services, District Attorney's Office, the Alliance for Children, Child Protective Services and Lena Pope Home to review and determine the options needed to address the sexual behavioral problems of pre-adolescent children ages 10 – 13 and their families. The Tarrant County program replicates the Problematic Sexual Behavior-Cognitive

³² Lori Robinson, Ph.D., Compilation of Sex Offender Resource Information and Scholarly Journals, November, 2015.

³³ Mark Chafin, *Our Minds Are Made Up – Don't Confuse Us With the Facts: Commentary on Policies Concerning Children With Sexual Behavior Problems and Juvenile Sex Offenders* (May 2013) and the National Juvenile Justice Network, *Fact Sheet on Youth Who Commit Sex Offenses*, http://www.acacamps.org/sites/default/files/resource_library/Fact-Sheet-Youth-Offenders.pdf (Accessed November 17, 2016); Richard Belzer, *The Costs and Benefits of Subjecting Juveniles to Sex Offender Registration and Notification*, (September 25, 2015) <http://www.rstreet.org/wp-content/uploads/2015/09/RSTREET41.pdf> (Last Accessed November 17, 2016).

³⁴ Christy Dunn, *Project SAFeR: Juvenile Sex Crime Diversion Program in Fort Worth*, Article (September 25, 2016), <https://www.bhwlawfirm.com/juvenile-sex-crime-diversion-program-tarrant-county-tx/> (Last Accessed November 17, 2016).

Behavioral Therapy (PSB-CBT) model that has been implemented in Omaha, Nebraska in conjunction with the Oklahoma Health Science Center and the Bureau of Justice Division of the Office of Juvenile Justice and Delinquency Prevention. Although the scope of the task force legislative charge focused on “adjudicated” youth, the information on the Tarrant County Project SAFeR initiatives highlight the efficacy of early intervention and diversion for youth who are at-risk of sexual behaviors that lead to delinquency and court involvement.

Overall, legislative and policy initiatives on the national level have been, in large measure, influenced by the research studies that provide extensive evidence-based data in support of the findings of the task force.

Public Safety. As the 2011 SORNA compliance deadline approached, Texas was among a number of states to express its reasons for opting out of the federal requirements. In an August 2011 letter³⁵ to the Department of Justice, the office of former Governor Rick Perry expressed concerns about the SORNA requirements and other barriers to implementation.³⁶ Jeffrey S. Boyd, Gov. Perry’s chief of staff, explained “In dealing with juvenile sex offenders, Texas law more appropriately provides for judges to determine whether registration would be beneficial to the community and the juvenile in a particular case.” While the cost of implementation was one factor³⁷, it has been argued that Texas’ public safety objectives in the juvenile justice system are promoted through an individualized dispositional model that considers judicial discretion and offender risk assessment to make appropriate registration decisions in combination with multi-systemic rehabilitation and treatment on a case-by-case basis.³⁸ As a result of a number of factors, juvenile registration has been argued to have only limited impact on public safety. The task force proposals contained in this report uphold the juvenile court’s discretion on registration and overall public safety objectives that have been a central component of the Texas model.

Task Force Milestones

The task force fulfilled its legislative mandates through information-gathering and investigative approaches that were utilized to assess, evaluate and identify important systemic needs. Consistent

³⁵ In 2011, Texas and New York were two states that sent letters to the SMART Office of the Department of Justice to provide formal notice and rationale for not implementing SORNA requirements. The letter stated that Texas’ sex offender laws were “undeniably among the most stringent in the nation.” http://www.ncleg.net/documents/sites/committees/JLOCJPS/2011-12%20Interim/October%2013,%202011%20Meeting/RD_SORNA_General_Information_2011-10-13.pdf

³⁶ Tex. S. Criminal Justice Interim Committee, Interim Charges Report, 82nd Leg., R.S. (December 10, 2010). Interim Charge One required the committee to study the issue of compliance with the Adam Walsh for the Act, focusing on the associated cost to the state and punishment of juveniles. <http://www.senate.state.tx.us/75r/senate/commit/c590/c590.InterimReport81.pdf> (Last Accessed November 17, 2016).

³⁷ Ibid. The Senate Criminal Justice Committee estimated that “it would cost Texas \$38.8 million to fully implement SORNA. The penalty for non-compliance is the loss of 10 percent of a state’s federal Byrne Justice Assistance Grant. In Texas, that’s about \$1.4 million.”

³⁸ Donna Lyons (June 2011). *Sex Offender Law: Down to the Wire*, National Conference of Statute Legislatures. http://www.ncsl.org/Portals/1/Documents/magazine/articles/2011/SL_0611-SexOffender.pdf

with the authority of HB 1144, the task force employed the following methods to examine key issues and develop findings and recommendations:

- Juvenile Registration Statutes Review
- Witness Testimony
- Practitioner Survey
- Training Provider Questionnaire
- Program Registry and Services Review
- Sex Offender Treatment Provider Review
- Statistical Data Review

Juvenile Registration Statutes. The task force legislative drafting team considered the recommendations of each subgroup and reviewed key sex offender statutes pertaining to juveniles. In addition to the laws found in Title 3 of the Family Code, other relevant provisions that impact juveniles contained in Article 62 of the Code of Criminal Procedure, Human Resources Code, Occupations Code, and Transportation Code as well as rules within the Texas Administrative Code were reviewed. The drafting team recommended the transfer of the provisions governing the procedural hearing for juvenile sex offender registration from Subchapter H in Article 62, Code of Criminal Procedure to Title 3 of the Family Code. Other proposed amendments are intended to clarify that juvenile sex offender registration will be controlled by new Chapter 54A, Family Code. Substantive and conforming amendments are presented in the Legislative Proposals and Commentary section contained in this report.



*Review
juvenile sex offender
registration...*

Witness Testimony. HB 1144 authorized the task force to solicit testimony from individuals, state and local agencies, community-based organizations, and other public and private organizations relevant to its work. Throughout its continuing authority, the task force received written submissions and witness testimony from a range of individuals and entities. In order to explore the experiences and perspectives associated with each charge, the task force received testimony during 4 of the 6 meetings from invited witnesses, including an active registrant and his parent, law professor, defense attorney, two clinical psychologists, counseling service providers, a former registrant (now sex offender rights advocate), the parent of a victim, and state agency representatives. Overall, witness recommendations emphasized the need for uniform court procedures; revamping of public registration laws; age-appropriate and individualized treatment; a reexamination of court-ordered family separation; efforts to promote family reintegration; as well as allocation of resources to improve the availability and suitability of



*...Hear testimony
relevant to the purposes of
the task force.*

programs and services for adjudicated and certified youth. In addition, written submissions and legal articles provided a substantive overview of the challenges of representing juvenile sex offenders and the disparate impact of registration on juveniles. A complete list of witnesses is available in Appendix D.

Court Procedures and Programs. In April 2016, the Court Procedures and Programs subgroup designed and distributed a survey regarding juvenile sex offender registration. Questions were targeted to stakeholders responsible for handling the adjudication and disposition of juvenile cases under Title 3 of the Family Code. The subgroup constructed a 20-question survey utilizing the Survey Monkey platform to gather practitioner opinions and attitudinal data regarding court procedures and sex offender registration. Responses were measured on a rating scale using a structured response format. The survey was initially distributed statewide to members of the judiciary. The sample was later expanded to include additional juvenile justice stakeholders such as prosecutors and defense attorneys from the membership of Texas District and County Attorneys Association (TDCAA) and the Texas Criminal Defense Lawyers Association (TCDLA). As voluntary participants, respondents were informed that their input would be used to guide the efforts of the task force in making policy recommendations regarding the appropriate juvenile offender monitoring necessary to balance community safety and the rehabilitative interests of the child. After a review of the summary data, the subgroup concluded that practitioners recognize that juveniles are more amenable to rehabilitation and understand the distinction between juvenile and adult sex offenders. In light of these and other findings, the task force concluded that registration is a dispositional tool that should be utilized at the court's discretion in limited circumstances based on relevant evidence to establish that registration is appropriate.



*Solicit
information...*

Practitioner Training. The Programs and Court Procedures subgroup evaluated the availability of juvenile sex offender training for practitioners throughout the state. A training provider questionnaire was designed to seek feedback from entities that offer juvenile justice seminars, conferences and continuing education. Training decision-makers were asked to complete the questionnaire on behalf of the organization or association. A simple questionnaire was developed and disseminated to the Texas Center for the Judiciary, Correctional Management Institute of Texas, the Texas Juvenile Justice Department, the Department of Public Safety, Juvenile Justice Association of Texas, Texas Probation Association, Texas Commission of Law Enforcement, Texas Bar Continuing Legal Education, Texas Criminal Defense Lawyers Association and the Texas District and County Attorneys Association. Specifically, training providers were asked the following questions: 1) whether voluntary or mandatory training regarding juveniles



*Review training
provided to
practitioners...*

adjudicated of sex offenses has been provided in the last five years; 2) the type of training activity; and 3) if training occurred, whether covered topics addressed the differences between juveniles and adult sex offenders, the potential for rehabilitation through treatment and best practices to reduce recidivism; and 4) the method used to determine topics covered.

Respondents revealed that juvenile sex offender-specific training is being provided by various groups. In particular, the Council on Sex Offender Treatment and Correctional Management Institute sponsor both the *CSOT Conference* and the *Annual Conference on Managing Juveniles with Sexual Behavior Problems* marketed to community corrections, probation officers, law enforcement, sex offender case managers, educators, prosecutors and mental health professionals. While these two conferences focus on sexual offenders management issues generally, a portion of the agenda is devoted to the unique issues pertaining to the juvenile sex offenders. Similarly, the Juvenile Law Section of the State Bar regularly provides juvenile-specific sex offender sessions during the *Robert O. Dawson Annual Juvenile Law Institute* and *Nuts and Bolts of Juvenile Law* (inactive conference). Other respondents reported that juvenile sex offender topics have not been covered in the preceding five-year period. The Mental Health and Counseling subgroup also made recommendations regarding the need for continuing education training for direct care staff who supervise youth with sexual behavior problems. Overall, a collaborative statewide training initiative for interested stakeholders may address the crucial gaps in the availability of training opportunities. Recommendations are incorporated in the report summary.

Program Registry and Services. The Texas Juvenile Justice Department (TJJD) is statutorily mandated to operate a statewide facility registry under Section 221.002(c), Human Resources Code. This registry functions as a database of information about each secure juvenile justice facility operating in counties throughout the state.³⁹ The information contained in the facility registry is utilized by the agency and juvenile justice practitioners to track the number and types of county juvenile justice facilities that provide residential programs and services for juvenile offenders. The TJJD Facility Registry is a searchable database that also contains information on sex offender services provided in public and private pre- adjudication and post-adjudication juvenile facilities. Similarly, TJJD maintains a legacy program registry⁴⁰ that is not mandated by statute, but has been used as a resource of available programs. In the program registry, “sex offender program” is defined as a type of program that assists juveniles in overcoming denial of or engagement in sexually inappropriate behavior by identifying and correcting problematic patterns of thinking, feeling, and acting.



*Review
programs...*

³⁹ The TJJD Facility Registry is available online at <http://www.tjjd.texas.gov/publications/other/searchfacilityregistry.aspx>. (Last Accessed November 17, 2016).

⁴⁰ The TJJD Program Registry is available online at <http://www.tjjd.texas.gov/programregistry.aspx>. (Last Accessed November 17, 2016).

Programs are required to be provided by a licensed professional staff of registered sex offender treatment providers. A single informational clearinghouse can be used to minimize geographic disparities and other barriers to programmatic and treatment provider services in rural and multi-county jurisdictions. The task force has reviewed the available resources and recommends the creation of a single program and services database or a redesign of the functionality and oversight of the existing database to ensure the validity and consistency in sex offender program definitions and service descriptions throughout the state.

Mental Health, Counseling and Treatment Provider Services. The task force was mandated to review the mental health, counseling and treatment services provided to juvenile sex offenders. Specifically, the subgroup was charged with examining the effectiveness of treatment in the rehabilitation of juvenile sex offenders and its role in the reduction of recidivism rates as well as the statewide shortage of juvenile sex offender treatment providers.



Review counseling, mental health, or other services...

Expert testimony and research presented to the task force support the conclusion that treatment of juveniles adjudicated for sexual offenses can be, and most frequently is, effective in the reduction of recidivism. When treatment is offered according to the risk-needs-responsivity principle and evidence or research-based curriculum, recidivism rates are lowered. As noted in its report of findings and recommendations, the subgroup reinforced the need for the creation of standards and rules that will provide greater guidance on: 1) the development of criteria that will ensure the quality and consistency of treatment programs and practices throughout the state; 2) the appropriate number of therapeutic hours for sex offender treatment based on risk and need; 3) safe housing for youth with sexual behavior problems (i.e., separating youth housing by age, physical size or stature; discontinuing the use of multi-occupancy rooms and the consideration of housing youth in single occupancy rooms or dormitory style); 4) safe and appropriate contact between juveniles and victims or potential victims; and 5) the involvement of third-party professionals to make assessments on the appropriateness of contact with victims.

During the information-gathering process, the subgroup determined that an in-depth cost-benefit analysis will be necessary to identify the most effective methods to implement recommendations on mental health and treatment providers discussed in this report. The subgroup called for the establishment of a committee consisting of treatment providers, licensing representatives, facility administrators, and representatives from various agencies including the Council of Sex Offender Treatment, Texas Juvenile Justice Department, and the Department of Family and Protective Services to work on these issues during the 85th Session.

In addition to the practitioner training initiatives described in this report, the subgroup recommended that the Council on Sex Offender Treatment (CSOT) should be enlisted to implement a standardized training curriculum for professionals applying to become Licensed Sex Offender

Treatment Providers (LSOTP). Currently, providers are required to obtain 40 hours of documented continuing education. However, there is no prescribed curriculum or list of training topics required during the 40 hours. The subgroup concluded that licensure eligibility for sex offender treatment providers should be based on the completion of standardized 40-hour training modules or topic-specific curriculum instead of non-standardized continuing education. A standardized curriculum will improve statewide uniformity in the professional requirements of licensed sex offender treatment providers. Statewide consistency in the licensure training curriculum will augment the legislative proposals that elevate the role of sex offender treatment providers in the registration decision.

Didactic training, (i.e., classroom teaching strategies) for providers should include items covered in the Rules and Regulations Relating to the Council on Sex Offender Treatment⁴¹ as well as standards of practice, assessment and evaluation, issues to be addressed in treatment, and the code of professional ethics. It is envisioned that CSOT and clinical supervisors will work collaboratively to establish the curriculum. Effective training and support may also reduce the burnout, high turnover rates and secondary traumatization reportedly experienced by some treatment professionals.

The subgroup also recommended that the risk assessment instrument process associated with sex offender notification requirements should be examined. Currently, when youth are required to register, risk assessments are made using one of two instruments either the STATIC 99-R⁴² or the Texas JSORAI-2⁴³, depending on age. A more stringent risk assessment process should be developed to determine whether registration is appropriate. Rather than relying solely on the STATIC 99-R or JSORAI-2 instruments, the subgroup contends that the assessment process should include more appropriate sources of information such as clinical interviews, review of records, and dynamic risk assessments. In addition, comprehensive assessments should be ongoing as the youth matures. For youth who are required to register, the subgroup recommended the discontinuation of the practice of labeling youth as High, Moderate, or Low risk and cautioned that these categories may not hold up empirically. In the alternative, when evaluated with other evidentiary factors, only moderate to high or high risk youth should be required to register.

In its review of the shortage of juvenile sex offender service providers, the subgroup examined the provider list found on the Council on Sex Offender Treatment's website⁴⁴. Currently, the state of Texas identifies 66 licensed sex offender treatment providers specializing in the treatment of

⁴¹ The Council on Sex Offender Treatment continuing education requirements are described in 22 Texas Administrative Code, Chapter 810 [http://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=22&pt=36&ch=810](http://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=22&pt=36&ch=810). CSOT statutory provisions are found in <http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.110.htm> (Last Accessed November 17, 2016).

⁴² Dennis Poole, Ph.D., et. al., Risk Assessment and Recidivism in Juvenile Sexual Offenders: A Validation Study of the STATIC-99, University of Texas School of Social Work, <https://www.tjjd.texas.gov/publications/forms/2000/RARCSEX0001.pdf> (2000). (Last Accessed November 17, 2016).

⁴³ Juvenile Sex Offender Risk Assessment Instrument -2 is available on the Texas Juvenile Justice Department website at <http://www.tjjd.texas.gov/publications/forms/2004/RARCSEX0104.pdf> 2009. (Last Accessed November 22, 2016),

⁴⁴ There were 66 listed LSOTP as of July 2016. The Council on Sex Offender Treatment homepage is maintained by the Texas Department of State Health Services at <https://www.dshs.texas.gov/csot/>. Last Accessed November 17, 2016).

juveniles.⁴⁵ There are 254 counties across the state of Texas and many geographic areas are without access to appropriately licensed sex offender providers. In order to address the shortage of providers, the subgroup recommended that a stakeholder task force or working committee should be established to identify ways to leverage resources to increase the number of licensed sex offender treatment providers across the state. The subgroup offered the following:

- Create incentives for currently licensed supervisors (LSOTP-S) to mentor/supervise interns;
- Consider the creation of a paraprofessional group that can provide supplement/supportive services such as: skills building, psychosexual education, development of prosocial behaviors, recreation and leisure skills, etc.; and
- Identify ways to increase reimbursement rates for providers in an effort to incentivize professionals to enter the field.⁴⁶

Overall, the subgroup identified barriers to statewide consistency in sex offender treatment programs as described in the key findings and recommendations. Additionally, the subgroup urged the standardization of the continuing education curriculum that serves as an essential component of the LSOTP license issuance and renewal process. Collaborative efforts to identify and implement solutions will address these inconsistencies and will have a direct impact on the quality of both treatment programs and providers. Many of these recommendations require further study of the relevant issues and proposed solutions to improve outcomes for juveniles adjudicated for sexual offenses.

Statistical Data Review. The Texas Juvenile Justice Department Research and Planning Division provided an overview of statistical data derived from the case management systems of county juvenile probation departments and state facilities. The meetings of the task force included presentations from agency research personnel on statistical information to facilitate discussion. It was noted that the Texas Juvenile Justice Department’s (TJJD) juvenile justice system data tracks referral events. As such, TJJD system data often vary from data maintained by the Department of Public Safety or Office of Court Administration.



*Review
statistical info...*

Given these limitations, the task force recommends that stronger emphasis should be placed on the collection of Texas-specific juvenile sex offender data in order to track, manage and evaluate

⁴⁵ Roster of Sex Offender Treatment Providers (Juveniles) is available online at the Department of State Health Services website at https://www.dshs.texas.gov/csot/csot_troster.shtm. (Last Accessed November 17, 2016).

⁴⁶ HB 1144 Mental Health and Counseling Services: Subgroup C Recommendations.

the consistency of court dispositions and the effectiveness of programs and services. This recommendation includes an acknowledgement of the obstacles that currently exist to track juveniles adjudicated of a sexual offense in Texas, along with a proposal to establish a tracking program.

Currently, the Texas Juvenile Justice Department (TJJD) maintains all data on juveniles in Texas who are adjudicated for any offense, including sexual offenses. Although the data are thorough, much information is largely absent from the data. From this data, detailed information cannot always be obtained, such as whether a juvenile successfully completed treatment and/or whether the juvenile committed additional sexual offenses after the age of 17. Long-term tracking of juveniles adjudicated of a sexual offense is virtually impossible at this time. To effectively track juveniles adjudicated of a sexual offense in Texas over a longer period of time, TJJD data must be assessed in combination with other data sources, including data from Texas Department of Public Safety (DPS). Moreover, under the current dissemination statute, data from TJJD cannot be linked to other sources of data (e.g., adult arrest records and sex offender registry information from the Texas DPS) without agreements (i.e., MOUs) in place.

The data available from TJJD at this time are complex; thus, questions as simple as, “what are the dispositions of juveniles adjudicated of a sexual offense vary among the 254 counties in Texas” yields a series of extensive tables that are cumbersome to interpret. In general, an annual report to address essential questions is needed (e.g., number of juveniles adjudicated of sexual offense, dispositions, treatment plan and compliance, recidivism tracked over several years, etc.). Overall, the scope and the complexity of the data made a cohesive presentation and analysis of data unfeasible.

Specific sex-offender registry data on individuals are purged after they are no longer required to register. Thus, archival data of past juvenile registrants are no longer available. At this time, it is impossible to compare juveniles adjudicated of a sexual offense who were and were not required to register. By implementing a tracking system, information regarding current and future juveniles adjudicated of a sexual offense could be assessed.

Collecting detailed information on juveniles adjudicated of sexual offenses in Texas will lead to an increased knowledge base, subsequently leading to a more tailored approach to managing such juveniles, which will provide the most effective use of Texas resources. It would also potentially bring Texas in compliance with the latest Sex Offender Registration and Notification Act (SORNA) requirements. As recently as August of 2016, the newest federal guidelines indicated that states will not necessarily lose funding if they are not in “exact conformity” with SORNA, but will rather consider how states prosecute juveniles for sex crimes; require registration; identify, track, manage/monitor juveniles; and how they maintain records prior to denying 10% of their Byrne Memorial Justice Assistance Grant (JAG) funds. Thus, Texas could potentially meet another point of compliance with the SORNA guidelines by implementing a system that identifies and tracks juveniles adjudicated of sexual offenses.

Alternate data sources do not capture information that would be helpful to assess juveniles adjudicated of sexual offenses in Texas. For example, the Federal Bureau of Investigation collects aggregate data (via the Uniform Crime Reports) and individual-level data (via the National Incident-Based Reporting System). Both of the data sources do not include unique identifiers for individuals, making long-term tracking impossible. Therefore, it is not possible to address questions such as whether specific juveniles re-offend.

The task force recommends funding that would establish a contract with Texas State University to hire a doctoral student in the School of Criminal Justice to develop an annual report of the status of juveniles adjudicated of sexual offenses in Texas. A memorandum of understanding with TJJJ and DPS would be required. It is envisioned that TJJJ staff could assist with matching and de-identifying the data, as required by Texas law. At this time, data on juveniles adjudicated of any criminal offense can only be released to other individuals (including researchers at Texas State University) after the removal of unique identifiers. The projected cost to fund a doctoral research assistantship would be based on the annual cost of hiring a 20-hour a week doctoral research assistant for 12-months.

Victims Issues. The task force solicited testimony from witnesses representing the perspectives of victims of delinquent sex offenses and agencies that provide victim support. The task force heard from Aja Gair, Senior Director of Residential Services at Austin Children’s Shelter, who spoke on the prevalence of youth affected by abuse, exploitation and neglect and the range of services offered by Safe Alliance. In addition, Mark Odom, Deputy Director Victim Services, Texas Department of Criminal Justice described victim services and provided agency resource information. Manuel “Mito” Gonzales, a former prosecutor and defense attorney also shared insight on the rights of victims and involvement in court proceedings. Compelling testimony was also provided by a parent of a victim and active registrant. At the parent’s request, anonymity has been protected.



Review information regarding the frequency of juvenile sex offenders being victims of abuse, neglect or witnesses to family violence...

In recent years, a growing body of national research on the statistical association between victimization, maltreatment and the commission of delinquent sexual offenses has emerged.⁴⁷ Most studies highlight the importance of early intervention and the use of trauma-informed care as an effective strategy. State-specific literature regarding the linkage of sexual offending behavior of youth who were victims of or experienced traumatic events such as abuse or domestic violence was sparse

⁴⁷ C. Cuevas, D. Finkelhor, et. al., OJJDP National Survey of Children’s Exposure to Violence—Children’s Exposure to Violence and the Intersection Between Delinquency and Victimization, (October 2013). <https://www.ojjdp.gov/pubs/240555.pdf> (Last Accessed November 2016).

and difficult to obtain.⁴⁸ Specifically, the task force also reviewed literature that explored whether there is a connection between sexual abuse and family violence and the commission of sexual offenses by juveniles. A summary of existing literature suggests the following:

- The relationship between sexual abuse victimization and subsequent commission of sexual abuse is weak; very few child abuse victims become sexual offenders either during their adolescence or adulthood. The belief that once one is abused, he or she is destined to become a sex offender is simply a myth.⁴⁹
- The majority of child sexual-abuse victims *do not* commit sex crimes later in life. One study,⁵⁰ for example, found that only 12% of sexually abused boys went on to commit contact sex crimes. More importantly, recently researchers have conducted meta-analyses, which provide an overall perspective of all studies on a specific topic (e.g., the link between child sexual abuse and subsequent sexual offending), by combining all of the recent research studies on a specific topic. Thus, meta-analyses are a “study of all studies.” A 2008⁵¹ meta-analysis that relied on 89 existing studies on this topic concluded that most individuals who are sexually abused as children do not later commit child sexual abuse.
- Researchers have found that child sexual abuse victimization is a strong predictor of other negative outcomes, such as depression and substance abuse.⁵² Thus, childhood sexual victimization is not “good” for anyone, but different victims respond differently,⁵³ depending on whether the victim has protective factors in place.⁵⁴
- Child sexual abuse is a risk factor, albeit weak, for later commission of sex crimes (often termed as the “abused-abuser hypothesis” or the “cycle of child abuse” hypothesis). The relationship is probabilistic, meaning childhood sexual victimization increases one’s risk of committing sex crimes, yet few who experience childhood sexual victimization will go on to commit a sexual offense.⁵⁵
- Many factors place individuals (juveniles and adults) at risk for committing a sexual offense. These include (but are not limited to): intimacy and social deficits, cognitive distortions, feelings of inadequacy, criminal predisposition, deviant sexual arousal, low self-control, poor self-management, empathy deficits, exposure to physical violence, domestic violence, family dysfunction, emotional abuse, and neglect. Typically those who commit sexual offenses often have a cluster (i.e., more than one) of these factors.

⁴⁸ Lori Robinson, Ph.D., Compilation of Sex Offender Resource Information and Scholarly Journals, November, 2015.

⁴⁹ Vandiver, D., Braithwaite, J. & Stafford, M. (2016). *Sex crimes and sex offenders: Research and realities*. New York: Routledge.

⁵⁰ Salter, D., McMillan, D., Richards, M., Talbot, T., Hodges, J., Bentovim, A., . . . Skuse, D. (2003). Development of sexually abusive behavior in sexually victimised males: A longitudinal study. *The Lancet*, 361, 471-476.

⁵¹ Whitaker, D. J., Le, B., Hanson, R. K., Baker, C. K., McMahon, P. M., Ryan, G., Klein, A., & Rice, D. D. (2008). Risk factors for the perpetration of child sexual abuse: A review and meta-analysis. *Child Abuse & Neglect*, 32 (5), 529–548.

⁵² Aebi, M., Landolt, M. A., Mueller-Pfeiffer, C., Schnyder, U., Maier, T., & Mohler-Kuo, M. (2015). Testing the “sexually abused-abuser hypothesis” in adolescents: A population-based study. *Archives of Sexual Behavior*, 44 (8), 2189–2199.

⁵³ Salter, A. C. (2003). *Predators: Pedophiles, rapists, and other sex offenders*. New York: Basic Books.

⁵⁴ Hanson, R. K. (2009). The psychological assessment of risk for crime and violence. *Canadian Psychology*, 50 (3), 172–182.

⁵⁵ Vandiver, D., Braithwaite, J. & Stafford, M. (2016). *Sex crimes and sex offenders: Research and realities*. New York: Routledge.

- Factors, such as family dysfunction and exposure to violence, also place individuals at an increased risk of committing a sexual offense. This is especially true for juveniles. For example, one study⁵⁶ of juvenile sex offenders found that three-fourths were exposed to violence against a female victim. Ninety percent of the sample was exposed to a male who exhibited antisocial behavior. Fifty-four percent witnessed a male relative assault a woman. Also, forty-nine percent had witnessed a related male threaten another male. Sixty-three percent of the sample had experienced physical abuse by a father/stepfather. Seventy-five percent reported sexual victimization. Other studies⁵⁷ have reported high rates of family problems, family dysfunction, exposure to marital violence, and parents who engaged in substance abuse.

⁵⁶ Hunter, J. A., Figueredo, A. J., Malamuth, N. M., & Becker, J. V. (2003). Juvenile sex offenders: Toward the development of a typology. *Sexual Abuse: A Journal of Research and Treatment*, 15 (1), 27–48.

⁵⁷ Righthand, S., & Welch, C. (2001). Juveniles who have sexually offended: A review of the professional literature (pp. 1–59). Washington DC: Office of Juvenile Justice and Delinquency Prevention.

Manocha, K. F., & Mezey, G. (1998). British adolescents who sexually abuse: A descriptive study. *Journal of Forensic Psychiatry*, 9 (3), 588–608.



Summary of Findings & Recommendations

SUMMARY OF FINDINGS

- Statutory revisions to the sex offender registration laws and procedures regarding juveniles adjudicated for delinquent sexual offenses are necessary to improve outcomes based on recommended national best practices, empirical research and public safety objectives.
- Information on sex offender programs, services and treatment providers should be available through a statewide clearinghouse.
- There are inconsistencies among treatment programs for juveniles and variations in the practice and quality of training for Licensed Sex Offender Treatment Provider (LSOTP) applicants.
- There are crucial gaps in the availability of continuing education and training for juvenile justice stakeholders, licensed sex offender treatment providers and other practitioners.
- Stronger emphasis should be placed on the collection of Texas-specific juvenile sex offender data in order to track, manage and evaluate the consistency of court dispositions and the effectiveness of programs and services.

SUMMARY OF RECOMMENDATIONS

The task force has developed a number of substantive proposals that may be implemented through legislative amendments or other policy or rule changes. The recommendations are summarized below:

1. Maintain juvenile sex offender registration and authorize the court to impose non-public registration in certain circumstances. Under the proposed law, juveniles would be ineligible for public registration.
2. Authorize the court to make the registration decision after notice of unsuccessful completion of sex offender treatment rather than at disposition.
3. Shift the burden to the State to seek the registration hearing based on relevant evidence, including: 1) notice of unsuccessful completion of sex offender treatment;⁵⁸ and 2)

⁵⁸ 22 Texas Administrative Code Sec. 810.2 (a)(26), explains in its definitions that “Successful Completion of Sex Offender Specific Treatment shall be determined by licensees based upon an analysis of risk, needs and responsivity issues. Factors to be considered shall include but are not limited to admitting and accepting responsibility for all criminal behavior, demonstrating the ability to control deviant sexual arousal, understanding the sexual offense cycle, increase in pro-social behaviors, increase in appropriate support systems, improved social competency, compliance with supervision, compliance with court conditions, increased understanding of victimization, no deception indicated on exit polygraphs, no deception indicated on the sex history polygraph, approved safety plans, approved reoffense prevention plans, successful completion

adjudication for a subsequent sexual offense as well as a range of evidentiary factors that will be considered by the court in making the registration decision.

4. Require the State to prove by a preponderance of evidence that public safety is increased by registration.
5. Relocate the hearing procedures under Subchapter H, Article 62, Code of Criminal Procedure to newly created Chapter 54A of the Family Code.
6. Recommend that the Council of Sex Offender Treatment develop and implement a standardized training curriculum for professionals applying to become Licensed Sex Offender Treatment Providers.
7. Recommend the establishment of a committee to investigate the shortage of Licensed Sex Offender Treatment Providers and identify ways to increase numbers across the state.
8. Develop training curriculum for juvenile justice stakeholders such as judges, law enforcement officers, parole and probation officers, prosecutors, defense lawyers and other service providers.
9. Create separate rules and standards for sexual behavior treatment programs.
10. Improve statistical tracking of sexual offender adjudications and disposition data.

Conclusion

The foregoing findings and recommendations of the Task Force on Improving the Outcomes for Juveniles Adjudicated of Sexual Offenses are the result of a year-long process of information-gathering and assessment of juvenile sex offender laws, court procedures, rehabilitative dispositions and treatment services as mandated by House Bill 1144 (84th R.S.). The task force has proposed a strategic framework that values public safety and accountability while ensuring outcome-focused opportunities that will lower recidivism for juveniles.

Recommendations include substantive legislative changes that attempt to closer align, to the extent appropriate, Texas laws with policy shifts at the federal level and the extensive empirical research that calls into question the efficacy of public sex offender registration as a viable dispositional tool. It is worth noting that the task force identified important strengths in the discretionary registration model that best serves the unique perspectives of Texas and its rehabilitative and public safety goals.



To that end, the task force proposes the new Chapter 54A, Family Code. As drafted, this chapter outlines the procedural requirements for the juvenile registration hearing. Non-public registration may be requested upon motion of the prosecutor after receipt of an unsuccessful discharge notice from sex offender treatment or upon notice of a subsequent reportable adjudication.

of adjunct treatments (for example: anger management, substance abuse, etc.), and the demonstrated integration and practical application of the skills presented in treatment .”

As contemplated by the task force, juveniles will be ineligible for public registration. Information relating to non-public registration is available only to criminal justice agencies and specifically named entities. The prosecutor will have the burden of persuasion and must prove that public safety is increased by registration. The juvenile court must consider all relevant evidence and balance public safety with the potential harm to the juvenile in making its decision to require non-public registration.

Rehabilitative outcomes for youth can be improved through an informational clearinghouse that contains descriptive information of available programs and services throughout the state. Also, the infrastructure for mental health, counseling and sex offender treatment can be enhanced by leveraging resources to increase the ranks of sex offender treatment providers and considering a new category of paraprofessionals to fulfill supplemental and supportive services. Standardized training curriculum for sex offender treatment providers and practitioner training initiatives are needed for licensing eligibility and to address crucial gaps in juvenile-specific profession training. As a final point, the task force urges collaboration in the collection and analysis of Texas-specific juvenile sex offender data in order to track, manage and evaluate the consistency of court dispositions and the effectiveness of programs and services.

The task force anticipates that the strategies and legislative proposals in this report will serve as a useful resource for state policymakers to enact laws and policy responses that will achieve the stated goal of improving the outcome of juveniles adjudicated of sexual offense in Texas.



Proposed Legislation & Commentary

1

2 **LEGISLATIVE PROPOSAL**

3 By:

__B. No.

4

5 A BILL TO BE ENTITLED

6 AN ACT

7 relating to treatment and registration of juveniles adjudicated for a sexual offense.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

9 SECTION 1. Article 62.001, Chapter 62, Code of Criminal Procedure, is amended by amending
10 Subdivisions (5) and (10) and adding Subdivision (5-a) to read as follows:

11 (5) "Reportable conviction [~~or adjudication~~]" means a conviction [~~or adjudication,~~
12 ~~including an adjudication of delinquent conduct~~] or a deferred adjudication, that, regardless of the
13 pendency of an appeal, is a conviction for or [~~an adjudication for or~~] based on:

14 (A) a violation of Section 21.02 (Continuous sexual abuse of young child or
15 children), 21.11 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or
16 25.02 (Prohibited sexual conduct), Penal Code;

17 (B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual
18 performance by a child), or 43.26 (Possession or promotion of child pornography), Penal Code;

19 (B-1) a violation of Section 43.02 (Prostitution), Penal Code, if the offense is
20 punishable under Subsection (c)(3) of that section;

21 (C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if
22 the actor committed the offense or engaged in the conduct with intent to violate or abuse the victim
23 sexually;

24 (D) a violation of Section 30.02 (Burglary), Penal Code, if the offense or
25 conduct is punishable under Subsection (d) of that section and the actor committed the offense or
26 engaged in the conduct with intent to commit a felony listed in Paragraph (A) or (C);

27 (E) a violation of Section 20.02 (Unlawful restraint), 20.03 (Kidnapping), or
28 20.04 (Aggravated kidnapping), Penal Code, if, as applicable:

1 (i) the judgment in the case contains an affirmative finding under
2 Article 42.015; or

3 (ii) the order in the hearing or the papers in the case contain an
4 affirmative finding that the victim or intended victim was younger than 17 years of age;

5 (F) the second violation of Section 21.08 (Indecent exposure), Penal Code, but
6 not if the second violation results in a deferred adjudication;

7 (G) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal
8 Code, to commit an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), (E), or (K);

9 (H) a violation of the laws of another state, federal law, the laws of a foreign
10 country, or the Uniform Code of Military Justice for or based on the violation of an offense containing
11 elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (B-
12 1), (C), (D), (E), (G), (J), or (K), but not if the violation results in a deferred adjudication;

13 (I) the second violation of the laws of another state, federal law, the laws of a
14 foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense
15 containing elements that are substantially similar to the elements of the offense of indecent exposure,
16 but not if the second violation results in a deferred adjudication;

17 (J) a violation of Section 33.021 (Online solicitation of a minor), Penal Code; or

18 (K) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons),
19 Penal Code.

20 (5-a) "Reportable adjudication" has the meaning assigned by Section 54A.01(2),
21 Family Code.

22 (10) "Extrajurisdictional registrant" means a person who:

23 (A) is required to register as a sex offender under:

24 (i) the laws of another state with which the department has entered
25 into a reciprocal registration agreement;

26 (ii) federal law or the Uniform Code of Military Justice; or

27 (iii) the laws of a foreign country; and

28 (B) is not otherwise required to register under this chapter because:

29 (i) the person does not have a reportable conviction for an offense
30 under the laws of the other state, federal law, the laws of the foreign country, or the Uniform Code of

1 Military Justice containing elements that are substantially similar to the elements of an offense
2 requiring registration under this chapter~~]; or~~

3 (ii) ~~the person does not have a reportable adjudication of delinquent~~
4 ~~conduct based on a violation of an offense under the laws of the other state, federal law, or the laws of~~
5 ~~the foreign country containing elements that are substantially similar to the elements of an offense~~
6 ~~requiring registration under this chapter].~~

7 SECTION 2. Article 62.002, Chapter 62, Code of Criminal Procedure, is amended to read as
8 follows:

9 Art. 62.002. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a reportable
10 conviction ~~or adjudication~~ occurring on or after September 1, 1970 or an order to register under
11 Chapter 54A, Family Code.

12 (b) Except as provided by Subsection (c), the duties imposed on a person required to register
13 under this chapter on the basis of a reportable conviction or order to register under Chapter 54A,
14 Family Code ~~adjudication~~, and the corresponding duties and powers of other entities in relation to
15 the person required to register on the basis of that conviction, or order to register under Chapter 54A,
16 Family Code ~~adjudication~~, are not affected by:

17 (1) an appeal of the conviction or of the reportable adjudication the subject of an
18 order to register under Chapter 54A, Family Code; or

19 (2) a pardon of the conviction or of the reportable adjudication the subject of an order
20 to register under Chapter 54A.

21 (c) If a conviction or reportable adjudication the subject of an order to register under Chapter
22 54A, Family Code ~~adjudication~~ that is the basis of a duty to register under this chapter is set aside on
23 appeal by a court or if the person required to register under this chapter on the basis of a conviction or
24 reportable adjudication the subject of an order to register under Chapter 54A, Family Code receives a
25 pardon on the basis of subsequent proof of innocence, the duties imposed on the person by this
26 chapter and the corresponding duties and powers of other entities in relation to the person are
27 terminated.

28 SECTION 3. Article 62.005, Chapter 62, Code of Criminal Procedure is amended by amending
29 Subsection (b) to read as follows:

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

32 (1) regarding the person's social security number or driver's license number, or any
33 home, work, or cellular telephone number of the person;

1 (2) that is described by Article 62.051(c)(7) or required by the department under
2 Article 62.051(c)(8), including any information regarding an employer's name, address, or telephone
3 number; [ø]

4 (3) that would identify the victim of the offense for which the person is subject to
5 registration; or

6 (4) that pertains to a person whose duty to register results from an order to register
7 under Chapter 54A, Family Code.

8 SECTION 4. Article 62.007, Chapter 62, Code of Criminal Procedure is amended by amending
9 Subsection (g) to read as follows:

10 (g) The numeric risk level assigned to a person required to register on the basis of a reportable
11 conviction, using the sex offender screening tool described by this article is not confidential and is
12 subject to disclosure under Chapter 552, Government Code.

13 SECTION 5. Article 62.051, Chapter 62, Code of Criminal Procedure is amended by amending
14 Subsections (a) and (i) to read as follows:

15 Art. 62.051. REGISTRATION: GENERAL. (a) A person who has a reportable conviction or has
16 been ordered to register under Chapter 54A, Family Code [~~adjudication~~] or who is required to register
17 as a condition of parole, release to mandatory supervision, or community supervision shall register or,
18 if the person is a person for whom registration is completed under this chapter, verify registration as
19 provided by Subsection (f), with the local law enforcement authority in any municipality where the
20 person resides or intends to reside for more than seven days. If the person does not reside or intend
21 to reside in a municipality, the person shall register or verify registration in any county where the
22 person resides or intends to reside for more than seven days. The person shall satisfy the
23 requirements of this subsection not later than the later of:

24 (1) the seventh day after the person's arrival in the municipality or county; or

25 (2) the first date the local law enforcement authority of the municipality or county by
26 policy allows the person to register or verify registration, as applicable.

27 (i) If the other state has a registration requirement for sex offenders, a person who has a
28 reportable conviction, or reportable adjudication, who resides in this state, and who is employed,
29 carries on a vocation, or is a student in another state shall, not later than the 10th day after the date on
30 which the person begins to work or attend school in the other state, register with the law enforcement
31 authority that is identified by the department as the authority designated by that state to receive
32 registration information. If the person is employed, carries on a vocation, or is a student at a public or
33 private institution of higher education in the other state and if an authority for campus security exists

1 at the institution, the person shall also register with that authority not later than the 10th day after the
2 date on which the person begins to work or attend school.

3 SECTION 6. Article 62.052, Chapter 62, Code of Criminal Procedure is amended by amending
4 Subsection (a) to read as follows:

5 Art. 62.052. REGISTRATION: EXTRAJURISDICTIONAL REGISTRANTS. (a) An extrajurisdictional
6 registrant is required to comply with the annual verification requirements of Article 62.058 in the same
7 manner as a person who is required to verify registration on the basis of a reportable conviction or an
8 order to register under Chapter 54A, Family Code ~~adjudication~~.

9 SECTION 7. Article 62.053, Chapter 62, Code of Criminal Procedure, is amended by amending
10 Subsections (a) and (d) to read as follows:

11 Art. 62.053. PRERELEASE NOTIFICATION. (a) Before a person who will be subject to
12 registration under this chapter is due to be released from a penal institution, the Texas Department of
13 Criminal Justice or the Texas Juvenile Justice Department shall determine the person's level of risk to
14 the community using the sex offender screening tool developed or selected under Article 62.007 and
15 assign to the person a numeric risk level of one, two, or three. Before releasing the person, an official
16 of the penal institution shall:

17 (1) inform the person that:

18 (A) not later than the later of the seventh day after the date on which the
19 person is released or after the date on which the person moves from a previous residence to a new
20 residence in this state or not later than the first date the applicable local law enforcement authority by
21 policy allows the person to register or verify registration, the person must register or verify
22 registration with the local law enforcement authority in the municipality or county in which the
23 person intends to reside;

24 (B) not later than the seventh day after the date on which the person is
25 released or the date on which the person moves from a previous residence to a new residence in this
26 state, the person must, if the person has not moved to an intended residence, report to the applicable
27 entity or entities as required by Article 62.051(h) or (j) or 62.055(e);

28 (C) not later than the seventh day before the date on which the person moves
29 to a new residence in this state or another state, the person must report in person to the local law
30 enforcement authority designated as the person's primary registration authority by the department
31 and to the juvenile probation officer, community supervision and corrections department officer, or
32 parole officer supervising the person;

33 (D) not later than the 10th day after the date on which the person arrives in
34 another state in which the person intends to reside, the person must register with the law

1 enforcement agency that is identified by the department as the agency designated by that state to
2 receive registration information, if the other state has a registration requirement for sex offenders;

3 (E) not later than the 30th day after the date on which the person is released,
4 the person must apply to the department in person for the issuance of an original or renewal driver's
5 license or personal identification certificate and a failure to apply to the department as required by
6 this paragraph results in the automatic revocation of any driver's license or personal identification
7 certificate issued by the department to the person;

8 (F) the person must notify appropriate entities of any change in status as
9 described by Article 62.057; and

10 (G) certain types of employment are prohibited under Article 62.063 for a
11 person with a reportable conviction [~~or adjudication for a sexually violent offense~~] involving a victim
12 younger than 14 years of age occurring on or after September 1, 2013;

13 (2) require the person to sign a written statement that the person was informed of the
14 person's duties as described by Subdivision (1) or Subsection (g) or, if the person refuses to sign the
15 statement, certify that the person was so informed;

16 (3) obtain the address or, if applicable, a detailed description of each geographical
17 location where the person expects to reside on the person's release and other registration
18 information, including a photograph and complete set of fingerprints; and

19 (4) complete the registration form for the person.

20 (d) If a person who has a reportable conviction described by Article 62.001(5)(H) or (I) is placed
21 under the supervision of the parole division of the Texas Department of Criminal Justice or a
22 community supervision and corrections department under Section 510.017, Government Code, the
23 division or community supervision and corrections department shall conduct the prerelease
24 notification and registration requirements specified in this article on the date the person is placed
25 under the supervision of the division or community supervision and corrections department. If a
26 person who is required to register under Chapter 54A, Family Code [~~has a reportable adjudication of~~
27 ~~delinquent conduct described by Article 62.001(5)(H) or (I)] is [~~as permitted by Section 60.002, Family~~
28 ~~Code;~~] placed under the supervision of the Texas Juvenile Justice Department [~~Youth Commission~~], a
29 public or private vendor operating under contract with the Texas Juvenile Justice Department [~~Youth~~
30 ~~Commission~~], a local juvenile probation department, or a juvenile secure pre-adjudication or post-
31 adjudication facility, the commission, vendor, probation department, or facility shall conduct the
32 prerelease notification and registration requirements specified in this article on the date the person is
33 placed under the supervision of the commission, vendor, probation department, or facility.~~

34 SECTION 8. Article 62.054, Chapter 62, Code of Criminal Procedure, is amended to read as
35 follows:

1 Art. 62.054. CIRCUMSTANCES REQUIRING NOTICE TO SUPERINTENDENT OR SCHOOL
2 ADMINISTRATOR. (a) A local law enforcement authority shall provide notice to the superintendent
3 and each administrator under Article 62.053(e) or 62.055(f) only if:

4 (1) the victim was at the time of the offense a child younger than 17 years of age or a
5 student enrolled in a public or private secondary school;

6 (2) the person subject to registration is a student enrolled in a public or private
7 secondary school; or

8 (3) the basis on which the person is subject to registration is a conviction, a deferred
9 adjudication, or an order to register under Chapter 54A, Family Code [~~adjudication of delinquent~~
10 ~~conduct~~] for an offense under Section 43.25 or 43.26, Penal Code, or an offense under the laws of
11 another state, federal law, or the Uniform Code of Military Justice that contains elements substantially
12 similar to the elements of an offense under either of those sections.

13 (b) A local law enforcement authority may not provide notice to the superintendent or any
14 administrator under Article 62.053(e) or 62.055(f) if the basis on which the person is subject to
15 registration is a conviction, a deferred adjudication, or an order to register under Chapter 54A, Family
16 Code [~~adjudication of delinquent conduct~~] for an offense under Section 25.02, Penal Code, or an
17 offense under the laws of another state, federal law, or the Uniform Code of Military Justice that
18 contains elements substantially similar to the elements of an offense under that section.

19 SECTION 9. Article 62.056, Chapter 62, Code of Criminal Procedure, is amended by amending
20 Subsection (c) to read as follows:

21 (c) The department shall establish procedures for a person with respect to whom notice is
22 provided under Subsection (a), other than a person subject to registration on the basis of an order to
23 register under Chapter 54A, Family Code [~~adjudication of delinquent conduct~~], to pay to the
24 department all costs incurred by the department in providing the notice. The person shall pay those
25 costs in accordance with the procedures established under this subsection.

26 SECTION 10. Article 62.062, Chapter 62, Code of Criminal Procedure, is amended to read as
27 follows:

28 Art. 62.062. LIMITATION ON NEWSPAPER PUBLICATION. ~~A [(a) Except as provided by~~
29 ~~Subsection (b), a]~~ local law enforcement authority may not publish notice in a newspaper or other
30 periodical or circular concerning a person's registration under this chapter if the only basis on which
31 the person is subject to registration is an order to register under Chapter 54A, Family Code [~~one or~~
32 ~~more adjudications of delinquent conduct~~].

33 ~~(b) This article does not apply to a publication of notice under Article 62.056.~~

1 SECTION 11. Article 62.063, Chapter 62, Code of Criminal Procedure, is amended by amending
2 Subsections (b) to read as follows:

3 Text of subsection effective on January 01, 2017

4 (b) A person subject to registration under this chapter because of a reportable conviction [~~or~~
5 ~~adjudication~~] for which an affirmative finding is entered under Article 42.015(b) or 42A.105(a), as
6 appropriate, may not, for compensation:

7 (1) operate or offer to operate a bus;

8 (2) provide or offer to provide a passenger taxicab or limousine transportation service;

9 (3) provide or offer to provide any type of service in the residence of another person
10 unless the provision of service will be supervised; or

11 (4) operate or offer to operate any amusement ride.

12 SECTION 12. Article 62.101, Chapter 62, Code of Criminal Procedure, is amended by amending
13 Subsections (a), and (c) and adding Subsection (d) to read as follows:

14 Art. 62.101. EXPIRATION OF DUTY TO REGISTER. (a) Except as provided by Subsection (b) and
15 Subchapter I, the duty to register for a person ends when the person dies if the person has a
16 reportable conviction [~~or adjudication, other than an adjudication of delinquent conduct,~~] for:

17 (1) a sexually violent offense;

18 (2) an offense under Section 20A.02(a)(3), (4), (7), or (8), 25.02, 43.05(a)(2), or 43.26,
19 Penal Code;

20 (3) an offense under Section 21.11(a)(2), Penal Code, if before or after the person is
21 convicted or adjudicated for the offense under Section 21.11(a)(2), Penal Code, the person receives or
22 has received another reportable conviction [~~or adjudication, other than an adjudication of delinquent~~
23 ~~conduct,~~] for an offense or conduct that requires registration under this chapter;

24 (4) an offense under Section 20.02, 20.03, or 20.04, Penal Code, if:

25 (A) the judgment in the case contains an affirmative finding under Article
26 42.015 or, for a deferred adjudication, the papers in the case contain an affirmative finding that the
27 victim or intended victim was younger than 17 years of age; and

28 (B) before or after the person is convicted or adjudicated for the offense under
29 Section 20.02, 20.03, or 20.04, Penal Code, the person receives or has received another reportable
30 conviction [~~or adjudication, other than an adjudication of delinquent conduct,~~] for an offense or
31 conduct that requires registration under this chapter; or

1 (5) an offense under Section 43.23, Penal Code, that is punishable under Subsection
2 (h) of that section.

3 (c) Except as provided by Subchapter I, the duty to register for a person with a reportable
4 conviction ~~[or adjudication]~~ for an offense other than an offense described by Subsection (a) ends[:

5 (1) ~~if the person's duty to register is based on an adjudication of delinquent conduct,~~
6 ~~on the 10th anniversary of the date on which the disposition is made or the person completes the~~
7 ~~terms of the disposition, whichever date is later; or~~

8 (2) ~~if the person's duty to register is based on a conviction or on an order of deferred~~
9 ~~adjudication,]~~ on the 10th anniversary of the date on which the court dismisses the criminal
10 proceedings against the person and discharges the person, the person is released from a penal
11 institution, or the person discharges community supervision, whichever date is later.

12 (d) Except as provided by Chapter 54A, the duty to register for a person ordered to register
13 under Chapter 54A, Family Code, ends on the 5th anniversary of the date on which the disposition
14 order is entered or the person completes the terms of the disposition, whichever is later.

15 SECTION 13. Article 62.152, Chapter 62, Code of Criminal Procedure, is amended by amending
16 Subsections (a) and (e) to read as follows:

17 Art. 62.152. REGISTRATION OF CERTAIN WORKERS OR STUDENTS. (a) A person is subject to
18 this subchapter and, except as otherwise provided by this article, to the other subchapters of this
19 chapter if the person:

20 (1) has a reportable conviction or is ordered to register under Chapter 54A, Family
21 Code ~~[adjudication]~~;

22 (2) resides in another state; and

23 (3) is employed, carries on a vocation, or is a student in this state.

24 (e) Notwithstanding Subsection (a), this article does not apply to a person who has a
25 reportable conviction ~~[or adjudication]~~, who resides in another state, and who is employed, carries on
26 a vocation, or is a student in this state if the person establishes another residence in this state to work
27 or attend school in this state. However, that person remains subject to the other articles of this
28 chapter based on that person's residence in this state.

29 SECTION 14. Article 62.301, Chapter 62, Code of Criminal Procedure, is amended by amending
30 Subsection (b) to read as follows:

31 Text of subsection effective on January 01, 2017

1 (b) A person is eligible to petition the court as described by Subsection (a) if:

2 (1) the person is required to register only as a result of a single reportable conviction
3 ~~[or adjudication, other than an adjudication of delinquent conduct]~~; and

4 (2) the court has entered in the appropriate judgment or has filed with the
5 appropriate papers a statement of an affirmative finding described by Article 42.017 or 42A.105(c).

6 SECTION 15. Article 62.402, Chapter 62, Code of Criminal Procedure, is amended by amending
7 Subsections (a), (b), and (c) to read as follows:

8 Art. 62.401. DEFINITION. In this subchapter, "council" means the Council on Sex Offender
9 Treatment.

10 Art. 62.402. DETERMINATION OF MINIMUM REQUIRED REGISTRATION PERIOD. (a) The
11 department by rule shall determine the minimum required registration period under federal law for
12 each reportable conviction under this chapter, or reportable adjudication the basis for an order to
13 register under Chapter 54A, Family Code ~~[under this chapter]~~.

14 (b) After determining the minimum required registration period for each reportable conviction
15 or reportable adjudication under Subsection (a), the department shall compile and publish a list of
16 reportable convictions, and shall compile a nonpublic list of ~~[or]~~ reportable adjudications the subject
17 of an order to register under Chapter 54A for which a person must register under this chapter for a
18 period that exceeds the minimum required registration period under federal law.

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

23 SECTION 16. Article 62.403, Chapter 62, Code of Criminal Procedure, is amended by amending
24 Subsections (a) and (b) to read as follows:

25 Art. 62.403. INDIVIDUAL RISK ASSESSMENT. (a) The council by rule shall establish, develop, or
26 adopt an individual risk assessment tool or a group of individual risk assessment tools that:

27 (1) evaluates the criminal history of a person required to register under this chapter;
28 and

29 (2) seeks to predict:

30 (A) the likelihood that the person will engage in criminal activity that may
31 result in the person receiving a second or subsequent reportable ~~[adjudication or]~~ conviction; and

1 (B) the continuing danger, if any, that the person poses to the community.

2 (b) On the written request of a person with a single reportable [~~adjudication or~~] conviction
3 that appears on the list published under Article 62.402(b), the council shall:

4 (1) evaluate the person using the individual risk assessment tool or group of individual
5 risk assessment tools established, developed, or adopted under Subsection (a); and

6 (2) provide to the person a written report detailing the outcome of an evaluation
7 conducted under Subdivision (1).

8 SECTION 17. Article 62.404, Chapter 62, Code of Criminal Procedure, is amended by amending
9 Subsections (a) and (b) to read as follows:

10 Art. 62.404. MOTION FOR EARLY TERMINATION. (a) A person required to register under this
11 chapter who has requested and received an individual risk assessment under Article 62.403 may file
12 with the trial court that sentenced the person for the reportable conviction [~~or adjudication~~] a motion
13 for early termination of the person's obligation to register under this chapter.

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

15 (1) a written explanation of how the reportable conviction [~~or adjudication~~] giving rise
16 to the movant's registration under this chapter qualifies as a reportable conviction [~~or adjudication~~]
17 that appears on the list published under Article 62.402(b); and

18 (2) a certified copy of a written report detailing the outcome of an individual risk
19 assessment evaluation conducted under Article 62.403(b)(1).

20 SECTION 18. Article 62.405, Chapter 62, Code of Criminal Procedure, is amended by amending
21 Subsection (b) to read as follows:

22 (b) The court may not grant a motion filed under Article 62.404 if:

23 (1) the motion is not accompanied by the documents required under Article
24 62.404(b); or

25 (2) the court determines that the reportable conviction [~~or adjudication~~] for which the
26 movant is required to register under this chapter is not a reportable conviction [~~or adjudication~~] for
27 which the movant is required to register for a period that exceeds the minimum required registration
28 period under federal law.

29 SECTION 19. Article 62.408, Chapter 62, Code of Criminal Procedure, is amended to read as
30 follows:

1 Art. 62.408. NONAPPLICABILITY. This subchapter does not apply to a person without a
2 reportable conviction [~~or adjudication~~] who is required to register as a condition of parole, release to
3 mandatory supervision, or community supervision.

4 SECTION 20. Section 37.302, Education Code, is amended by amending Subdivision (2) to read
5 as follows:

6 Sec. 37.302. Applicability.

7 This subchapter:

8 (1) applies to a student who is required to register as a sex offender under Chapter 54A,
9 Family Code or Chapter 62, Code of Criminal Procedure; and

10 (2) does not apply to a student who is no longer required to register as a sex offender under
11 Chapter 54A, Family Code or Chapter 62, Code of Criminal Procedure [~~including a student who~~
12 ~~receives an exemption from registration under Subchapter H, Chapter 62, Code of Criminal Procedure,~~
13 ~~or a student who receives an early termination of the obligation to register under Subchapter I,~~
14 ~~Chapter 62, Code of Criminal Procedure~~].

15 SECTION 21. Section 37.303, Education Code, is amended to read as follows:

16 Sec. 37.303. REMOVAL OF REGISTERED SEX OFFENDER FROM REGULAR CLASSROOM.

17 Notwithstanding any provision of Subchapter A, on receiving notice under Article 15.27,
18 Code of Criminal Procedure, or Chapter 62, Code of Criminal Procedure, that a student is required to
19 register as a sex offender under that chapter, a school district may [~~shall~~] remove the student from the
20 regular classroom and determine the appropriate placement of the student in the manner provided
21 by this subchapter.

22 SECTION 22. Section 37.305, Education Code, is redesignated as Section 37.304, Education
23 Code and amended to read as follows:

24 Sec. 37.304 [~~37.305~~]. PLACEMENT OF REGISTERED SEX OFFENDER [~~WHO IS NOT UNDER~~
25 ~~COURT SUPERVISION~~].

26 A school district may place a student to whom this subchapter applies [~~and who is not under~~
27 ~~any form of court supervision~~] in the appropriate alternative education program as provided by
28 Section 37.309 for one semester or in the regular classroom. The district may not place the student in
29 the regular classroom if the district board of trustees determines that the student's presence in the
30 regular classroom: (1) threatens the safety of other students or teachers;

31 (2) will be detrimental to the educational process; or

1 (3) is not in the best interests of the district's students.

2 SECTION 23. Section 37.306, Education Code, is redesignated as Section 37.305, Education
3 Code and amended by amending Subsection (a) to read as follows:

4 Sec. 37.305 [~~37.306~~]. REVIEW OF PLACEMENT IN ALTERNATIVE EDUCATION PROGRAM.

5 (a) At the end of the first semester of a student's placement in an alternative education
6 program under Section 37.304 [~~or 37.305~~], the school district board of trustees shall convene a
7 committee to review the student's placement in the alternative education program. The committee
8 must be composed of: (1) a classroom teacher from the campus to which the student would be
9 assigned were the student not placed in an alternative education program;

10 (2) the student's parole or probation officer or, in the case of a student who does not have a
11 parole or probation officer, a representative of the local juvenile probation department;

12 (3) an instructor from the alternative education program to which the student is assigned;

13 (4) a school district designee selected by the board of trustees; and

14 (5) a school counselor employed by the school district.

15 SECTION 24. Section 37.307, Education Code, is redesignated as Section 37.306, Education
16 Code and amended by amending Subsection (b) to read as follows:

17 Sec. 37.306 [~~37.307~~]. PLACEMENT AND REVIEW OF STUDENT WITH DISABILITY.

18 (b) The review under Section 37.305 [~~37.306~~] of the placement of a student with a disability
19 who receives special education services may be made only by a duly constituted admission, review,
20 and dismissal committee. The admission, review, and dismissal committee may request that the board
21 of trustees convene a committee described by Section 37.305(a) [~~37.306(a)~~] to assist the admission,
22 review, and dismissal committee in conducting the review.

23 SECTION 25. Section 37.308, Education Code, is redesignated as Section 37.307, Education
24 Code and amended to read as follows:

25 Sec. 37.307 [~~37.308~~]. TRANSFER OF REGISTERED SEX OFFENDER.

26 Except as provided by Section 37.304(b), a school district shall determine whether to place a
27 student to whom this subchapter applies and who transfers to the district in the appropriate
28 alternative education program as provided by Section 37.308 [~~37.309~~] or in a regular classroom. The
29 school district shall follow the procedures specified under Section 37.305 [~~37.306~~] in making the
30 determination.

1 SECTION 26. Section 37.309, Education Code, is redesignated as Section 37.308, Education
2 Code.

3 SECTION 27. Section 51.073(d-1), Family Code, is amended to read as follows:

4 (d-1) On the final transfer of a case involving a child who has been adjudicated as having
5 committed an offense for which registration is ~~[required]~~ ordered under Chapter ~~[62, Code of~~
6 ~~Criminal Procedure]~~ 54A, the receiving county shall have jurisdiction to conduct a hearing
7 under that chapter. This subsection does not prohibit the receiving county juvenile court from
8 considering the written recommendations of the sending county juvenile court.

9 SECTION 28. Section 54.03, Family Code, is amended by adding Subsection (k) to read as
10 follows:

11 (k) If the court or jury found at the conclusion of the adjudication hearing that the child
12 engaged in delinquent conduct that constitutes a reportable adjudication under Section 54A.01(2),
13 the child is not required to register as a sex offender unless there is a court order requiring registration
14 under Chapter 54A.

15 SECTION 29. Section 54.0405, Family Code, is amended by amending Subsections (a), (b), (c),
16 (g), and (i) and adding Subsections (j) to read as follows:

17 Sec. 54.0405. CHILD PLACED ON PROBATION FOR CONDUCT CONSTITUTING SEXUAL OFFENSE.

18 (a) If a court or jury makes a disposition under Section 54.04 in which a child described by Subsection
19 (b) is placed on probation the court:

20 (1) may require as a condition of probation that the child:

21 (A) attend and successfully complete sex offender treatment ~~[psychological~~
22 ~~counseling sessions for sex offenders]~~ as provided by Subsection (e); and

23 (B) submit to a polygraph examination as provided by Subsection (f) for
24 purposes of evaluating the child's treatment progress; and

25 (2) shall require as a condition of probation that the child ~~]:~~

26 ~~(A) register under Chapter 62, Code of Criminal Procedure; and~~

27 ~~(B)]~~ submit a blood sample or other specimen to the Department of Public
28 Safety under Subchapter G, Chapter 411, Government Code, for the purpose of creating a DNA record
29 of the child, unless the child has already submitted the required specimen under other state law.

30 (b) This section applies to a child placed on probation for conduct constituting an offense for
31 which the child is ordered ~~[required]~~ to register as a sex offender under ~~[this]~~ Chapter 54A ~~[62, Code of~~
32 ~~Criminal Procedure]~~.

1 (c) Sex offender treatment [~~Psychological counseling~~] required as a condition of probation
2 under Subsection (a) must be with an individual or organization that:

3 (1) provides sex offender treatment [~~or counseling~~];

4 (2) is a sex offender treatment provider, as defined by Section 110.001(7),
5 Occupations Code, specified by the local juvenile probation department supervising the child; and

6 (3) meets minimum standards of sex offender treatment [~~counseling~~] established by
7 the local juvenile probation department in accordance with guidelines established by the council on
8 sex offender treatment providers and licensing or registry standards.

9 (g) A court that requires [~~as a condition of probation~~] that a child attend sex offender
10 treatment [~~psychological counseling~~] under Subsection (a) may order the parent or guardian of the
11 child to:

12 (1) attend four sessions of instruction with an individual or organization specified by
13 the court relating to:

14 (A) sexual offenses;

15 (B) family communication skills;

16 (C) sex offender treatment;

17 (D) victims' rights;

18 (E) parental supervision; and

19 (F) appropriate sexual behavior; and

20 (2) during the period the child attends sex offender treatment [~~psychological~~
21 ~~counseling~~], participate in monthly treatment groups conducted by the child's treatment provider
22 relating to the child's sex offender treatment [~~psychological counseling~~].

23 (i) A court that requires as a condition of probation that a child attend sex offender treatment
24 [~~psychological counseling~~] under Subsection (a) may, before the date the probation period ends,
25 extend the probation for any additional period necessary to complete the required treatment
26 [~~counseling~~] as determined by the treatment provider, except that the probation may not be
27 extended to a date after the date of the child's 18th birthday, or 19th birthday if the child is placed on
28 determinate sentence probation under Section 54.04(q).

29 (j) A court that requires that a child attend sex offender treatment under Subsection (a) shall
30 require the individual or organization specified by the court to promptly provide upon request by the

1 prosecuting attorney, the child’s attorney or the juvenile probation department a copy of a report
2 that:

3 (1) describes the treatment of the child provided by the individual or organization; and

4 (2) states the opinion of the treatment provider whether the child would benefit from
5 further treatment, or should be successfully or unsuccessfully discharged from further treatment.

6 SECTION 30. Section 54.0501, Family Code, is amended by amending Subsections (g) and (h)
7 to read as follows:

8 (g) If the juvenile court places the child on probation for an offense for which registration as a
9 sex offender may be ordered under Chapter 54A [~~is required by Chapter 62, Code of Criminal~~
10 ~~Procedure, and defers the registration requirement until completion of treatment for the sex offense~~
11 ~~under Subchapter H, Chapter 62, Code of Criminal Procedure~~], the authority to enter orders under
12 Chapter 54A [~~under that article to reexamine the need for registration on completion of treatment~~] is
13 transferred to the court to which probation is transferred.

14 (h) If the juvenile court places the child on probation for an offense for which registration as a
15 sex offender may be ordered under Chapter 54A [~~is required by Chapter 62, Code of Criminal~~
16 ~~Procedure~~], and the child registers, the authority of the court to order early termination of registration
17 [~~excuse further compliance with the registration requirement~~] under Section 54A [~~Subchapter H,~~
18 ~~Chapter 62, Code of Criminal Procedure~~], is transferred to the court to which probation is transferred.

19 SECTION 31. Title 3, Family Code, is amended by adding Chapter 54A to read as follows:

20 CHAPTER 54A. JUVENILE SEX OFFENDER REGISTRATION

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Sec. 54A.01. DEFINITIONS. In this chapter:

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

25 (2) “Reportable adjudication” means an adjudication of delinquent conduct that, regardless of
26 the pendency of an appeal, is an adjudication based on:

27 (A) a violation of Section 21.02 (Continuous sexual abuse of young child or children), 21.11
28 (Indecency with a child), 22.011 (Sexual assault), 22.021 (Aggravated sexual assault), or 25.02
29 (Prohibited sexual conduct), Penal Code;

30 (B) a violation of Section 43.05 (Compelling prostitution), 43.25 (Sexual performance by a
31 child), or 43.26 (Possession or promotion of child pornography), Penal Code;

1 (C) a violation of Section 20.04(a)(4) (Aggravated kidnapping), Penal Code, if the actor
2 committed the offense or engaged in the conduct with intent to violate or abuse the victim sexually;

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

6 (E) the second violation of Section 21.08 (Indecent exposure), Penal Code;

7 (F) an attempt, conspiracy, or solicitation, as defined by Chapter 15, Penal Code, to commit
8 an offense or engage in conduct listed in Paragraph (A), (B), (C), (D), or (J);

9 (G) a violation of the laws of another state, federal law, the laws of a foreign country for or
10 based on the violation of an offense containing elements that are substantially similar to the elements
11 of an offense listed under Paragraph (A), (B), (C), (D), (F), (I), or (J);

12 (H) the second violation of the laws of another state, federal law, the laws of a foreign
13 country for or based on the violation of an offense containing elements that are substantially similar to
14 the elements of the offense of indecent exposure;

15 (I) a violation of Section 33.021 (Online solicitation of a minor), Penal Code; or

16 (J) a violation of Section 20A.02(a)(3), (4), (7), or (8) (Trafficking of persons), Penal Code.

17 SUBCHAPTER B. JUVENILE SEX OFFENDER REGISTRATION

18 Sec. 54A.02. MOTION AND HEARING ON SEX OFFENDER REGISTRATION. (a) After a
19 disposition hearing for a reportable offense described in 54A.01(2), the prosecuting attorney may file a
20 written motion requesting a hearing to require the child to register as a sex offender:

21 (1) upon receipt of a report described in Section 54.0405(j) or 245.053(j), Human
22 Resources Code from a licensed sex offender treatment provider, as that term is defined in Section
23 110.001(7), Occupations Code, that the child has been unsuccessfully discharged from sex offender
24 treatment; or

25 (2) if the child has been adjudicated to have engaged in delinquent conduct for an
26 offense listed in Section 54A.01(2), subsequent to a prior adjudication for an offense listed in Section
27 54A.01(2) for which the child has had an opportunity to complete court-ordered sex offender
28 treatment.

29 (b) A hearing under this Chapter is without a jury, and the burden of persuasion is on the
30 prosecuting attorney to show by a preponderance of evidence that:

31 (1) the protection of the public would be increased by registration under this section; and

32 (2) any increase in protection of the public resulting from registration of the child clearly
33 outweighs the anticipated substantial harm to the child and the child's family that would result from
34 registration under this Chapter.

1 (c) Reasonable notice of a hearing to require sex offender registration shall be given to all
2 parties.

3 (d) The court at the hearing shall:

4 (1) consider all relevant evidence, including but not limited to:

5 (i) the commission by the child of any other sexual offense listed in Section 54A.01(2);

6 (ii) the conduct of the child in the commission of the offense or offenses which are
7 the subject of the adjudication;

8 (iii) any physical, mental or emotional harm to the victim as a result of the child's
9 conduct;

10 (iv) the age of the child at the time of the commission of the offense or offenses; and

11 (2) make its determination based on:

12 (i) the receipt of exhibits;

13 (ii) the testimony of witnesses;

14 (iii) representations of counsel for the parties; or

15 (iv) the contents of a social history report prepared by the juvenile probation
16 department that may include the results of testing and examination of the child by a psychologist,
17 psychiatrist, or counselor.

18 (e) All written matter considered by the court shall be disclosed to all parties as provided by
19 Section 54.04(b).

20 Sec. 54A.03. ORDER GENERALLY. (a) After a hearing under Section 54A.02, if the court
21 determines that the protection of the public would be increased by registration under this Chapter
22 and any increase in protection of the public resulting from registration of the child clearly outweighs
23 the anticipated substantial harm to the child and the child's family that would result from registration
24 under this section, the court shall enter an order requiring a child to register as a sex offender in
25 accordance with the registration procedures set out in Chapter 62, Code of Criminal Procedure, but
26 providing that the registration information is not public information and is restricted to use by law
27 enforcement and criminal justice agencies, the Council on Sex Offender Treatment, the Department of
28 Family and Protective Services, and public or private institutions of higher education and may not be
29 posted on the internet or released to the public in any manner.

30 (b) After a hearing under this Chapter, if the court finds the prosecuting attorney has not
31 met its burden regarding registration, the court shall enter an order so stating and the child shall not
32 be required to register.

33 SUBCHAPTER C. REGISTRATION FOR CERTAIN PERSONS

34 Sec. 54A.04. PERSONS ALREADY REGISTERED. A person who has registered under Chapter
35 62, Code of Criminal Procedure as a sex offender for an adjudication of delinquent conduct prior to
36 September 1, 2017 and whose registration is on a public registry, shall be automatically removed from
37 the public registry and that person's registration shall become nonpublic.

38 Sec. 54A.05. MOTION, HEARING, AND ORDER CONCERNING PERSON WITH AN OUT-OF-
39 STATE ADJUDICATION. The prosecuting attorney may file a motion requesting sex offender

1 registration of a person with an out-of-state adjudication for an offense listed in Section 54A.01(2).
2 The motion may be filed in the juvenile court of the person's county of residence. On receipt of a
3 motion under this subsection, the juvenile court shall conduct a hearing and make rulings as in other
4 cases under 54A.02.

5 SUBCHAPTER D. APPEAL OF CERTAIN ORDERS

6 Sec. 54A.06. APPEAL OF CERTAIN ORDERS. (a) Notwithstanding Section 56.01, Family Code,
7 on entry by a juvenile court of an order under Section 54A.03(b) or Section 54A.05(a) denying the
8 state's motion to require registration, the prosecuting attorney may appeal that order by giving notice
9 of appeal within the time required under Rule 26.2(b), Texas Rules of Appellate Procedure. The appeal
10 is civil and the standard of review in the appellate court is whether the juvenile court committed
11 procedural error or abused its discretion in exempting the person from registration under this chapter.
12 The appeal is limited to review of the order denying the person from registration under this chapter
13 and may not include any other issues in the case.

14 (b) A child may under Section 56.01, Family Code, appeal a juvenile court's order under
15 Section 54A.03(a) requiring registration in the same manner as the appeal of any other legal issue in
16 the case. The standard of review in the appellate court is whether the juvenile court committed
17 procedural error or abused its discretion in ordering registration.

18 SUBCHAPTER E. EARLY TERMINATION OF OBLIGATION TO REGISTER

19 Sec. 54A.07. DEFINITION. In this subchapter, "council" means the Council on Sex Offender
20 Treatment.

21 Sec. 54A.08. INDIVIDUAL RISK ASSESSMENT. (a) The council by rule shall establish, develop, or
22 adopt an individual risk assessment tool or a group of individual risk assessment tools that:

23 (1) evaluates the criminal history of a person required to register under this chapter;
24 and

25 (2) seeks to predict:

26 (A) the likelihood that the person will engage in criminal activity that may
27 result in the person receiving a second or subsequent reportable adjudication; and

28 (B) the continuing danger, if any, that the person poses to the community.

29 (b) On the written request of a person with a single reportable adjudication that appears on
30 the nonpublic list compiled by the Department of Public Safety under Article 62.402(b), the council
31 shall:

1 (1) evaluate the person using the individual risk assessment tool or group of individual
2 risk assessment tools established, developed, or adopted under Subsection (a); and

3 (2) provide to the person a written report detailing the outcome of an evaluation
4 conducted under Subdivision (1).

5 Sec. 54A.09. MOTION FOR EARLY TERMINATION OF OBLIGATION TO REGISTER. A person
6 ordered to register under this Chapter for a reportable adjudication, who has requested and received
7 an individual risk assessment under Section 54A.08, may file a motion for early termination of the
8 person's obligation to register under this Chapter with the juvenile court that adjudicated the person.

9 (a) A motion filed under this section must be accompanied by:

10 (1) A written explanation of how the reportable adjudication giving rise to the
11 person's registration under this Chapter qualifies as a reportable adjudication; and

12 (2) A certified copy of a written report detailing the outcome of an individual risk
13 assessment evaluation conducted in accordance with Section 54A.08.

14 Sec. 54A.10. HEARING ON PETITION. (a) After reviewing a motion filed with the juvenile
15 court under Section 54A.09, the court may:

16 (1) deny without a hearing the person's request for early termination; or

17 (2) hold a hearing on the motion to determine whether to grant or deny the
18 motion.

19 (b) The court may not grant a motion filed under Section 54A.09 if:

20 (1) the motion is not accompanied by the documents required under Section
21 54A.09; or

22 (2) the court determines that the reportable adjudication for which the person is
23 ordered or required to register under this Chapter is not a reportable adjudication for which the
24 person is required to register for a period that exceeds the minimum required registration period
25 under federal law.

26 Sec. 54A.11. COSTS OF INDIVIDUAL RISK ASSESSMENT AND OF COURT. A person required to
27 register under this Chapter who files a motion for early termination of the person's registration
28 obligation under this Chapter is responsible for and shall remit to the Council on Sex Offender
29 Treatment and to the court, as applicable, all costs associated with and incurred by the council in
30 providing the individual risk assessment or by the court in holding a hearing under Section 54A.10.

31 Sec. 54A.12. EFFECT OF ORDER GRANTING EARLY TERMINATION. (a) If, after notice to the
32 person and to the prosecuting attorney and a hearing, the court grants a motion filed under Section
33 54A.09 for early termination of a person's obligation to register under this Chapter, the person's
34 obligation to register under this Chapter ends on the later of:

1 (1) the date the court enters the order of early termination; or

2 (2) the date the person has paid each cost described by Section 54A.11.

3 (b) If the court grants a motion filed under Section 54A.09 for early termination of a person's
4 obligation to register under this Chapter, all conditions of the person's parole, release to mandatory
5 supervision, or community supervision shall be modified in accordance with the court's order.

6 SUBCHAPTER F. CONFLICT OF LAW

7 Sec. 54A.11 CONFLICT OF LAW. In the event of a conflict between this Chapter and a
8 provision of Chapter 62, Government Code, the provisions of this Chapter shall prevail.

9 SECTION 32. Section 58.003(n), Family Code is amended to read as follows:

10 (n) A record created or maintained under Chapter 62, Code of Criminal Procedure as a result
11 of registration based on an order issued under Chapter 54A, may not be sealed under this section if
12 the person who is the subject of the record has a continuing obligation to register under Chapter 62,
13 Code of Criminal Procedure [that chapter].

14 SECTION 33. Section 411.1473, Government Code is amended by amending Subsection (a) to
15 read as follows:

16 Sec. 411.1473. DNA RECORDS OF CERTAIN REGISTERED SEX OFFENDERS. (a) This section
17 applies only to a person who is required to register under Chapter 62, Code of Criminal Procedure as a
18 result of a reportable conviction under that Chapter or a person who is ordered to register under
19 Chapter 54A, Family Code.

20 SECTION 34. Section 245.053, Human Resources Code, is amended by amending Subsections
21 (a), (b), (c), (g), and (i) and adding Subsection (j) to read as follows:

22 Sec. 245.053. SEX OFFENDER COUNSELING AND TREATMENT. (a) Before releasing a child described
23 by Subsection (b) under supervision, the department:

24 (1) may require as a condition of release that the child:

25 (A) attend and successfully complete sex offender treatment, [~~psychological counseling sessions for~~
26 ~~sex offenders~~] as provided by Subsection (e); and

27 (B) submit to a polygraph examination as provided by Subsection (f) for purposes of evaluating the
28 child's treatment progress; and

29 (2) shall require as a condition of release that the child[:

30 (A) ~~register under Chapter 62, Code of Criminal Procedure; and~~

1 ~~(B)~~ submit a blood sample or other specimen to the Department of Public Safety under Subchapter
2 G, Chapter 411, Government Code, for the purpose of creating a DNA record of the child, unless the
3 child has already submitted the required specimen under other state law.

4 (b) This section applies to a child adjudicated for engaging in delinquent conduct constituting an
5 offense for which the child is ordered ~~[required]~~ to register as a sex offender under Chapter 54A,
6 Family Code ~~[62, Code of Criminal Procedure]~~.

7 (c) Sex offender treatment ~~[Psychological counseling]~~ required as a condition of release under
8 Subsection (a) must be with an individual or organization that:

9 (1) provides sex offender treatment or counseling;

10 (2) is a sex offender treatment provider, as defined by Section 110.001(7), Occupations Code,
11 specified by the department; and

12 (3) meets minimum standards of counseling established by the department in accordance with
13 the guidelines established by the council on sex offender treatment providers and licensing or registry
14 standards.

15 (g) If the department requires as a condition of release that a child attend sex offender treatment
16 ~~[psychological counseling]~~ under Subsection (a), the department shall notify the court that committed
17 the child to the department. After receiving notification from the department under this subsection,
18 the court may order the parent or guardian of the child to:

19 (1) attend four sessions of instruction with an individual or organization specified by the department
20 relating to:

21 (A) sexual offenses;

22 (B) family communication skills;

23 (C) sex offender treatment;

24 (D) victims' rights;

25 (E) parental supervision; and

26 (F) appropriate sexual behavior; and

27 (2) during the time the child attends sex offender treatment, ~~[psychological counseling]~~, participate in
28 monthly treatment groups conducted by the child's treatment provider relating to the child's sex
29 offender treatment ~~[psychological counseling]~~.

1 (i) If the department requires as a condition of release that a child attend sex offender treatment
2 [~~psychological counseling~~] under Subsection (a), the department may, before the date the period of
3 release ends, petition the appropriate court to request the court to extend the period of release for an
4 additional period necessary to complete the required sex offender treatment [~~counseling~~] as
5 determined by the treatment provider, except that the release period may not be extended to a date
6 after the date of the child's 18th birthday.

7 (j) If the department requires as a condition of release that a child attend sex offender treatment under
8 subsection (a), the department shall require the individual or organization specified by the
9 department to promptly provide upon request of the department, the prosecuting attorney, or the
10 child's attorney, a copy of a report that:

11 (1) describes the treatment of the child provided by the individual or organization; and

12 (2) states the opinion of the treatment provider whether the child would benefit from further
13 treatment, or should be successfully discharged from further treatment.

14 SECTION 35. Section 110.001, Occupations Code, is amended by adding Subdivision (7-a) to
15 read as follows:

16 (7-a) "Sexual behavior educator/paraprofessional" means a person, licensed by the
17 council and recognized based on training and experience to provide psychoeducational and skills-
18 based interventions to juveniles with sexual behavior problems who have been adjudicated or
19 referred to a state agency or a court.

20 SECTION 36. Section 110.151, Occupations Code, is amended by amending Subdivision (3) and
21 adding Subdivision (2-a) to read as follows:

22 Sec. 110.151. TREATMENT FOR SEX OFFENDERS. The council shall:

23 (1) develop treatment strategies for sex offenders by evaluating in-state and out-of-
24 state programs for sex offender treatment;

25 (2) set standards for treatment of sex offenders that must be met by sex offender
26 treatment providers to be eligible for a license under this chapter;

27 (2-a) set standards for residential programs offering treatment to juveniles with sexual
28 behavior problems; and

29 (3) recommend to licensing and regulatory boards and to the directors of current
30 programs methods of improving residential programs to meet council standards.

31 SECTION 37. Section 110.152, Occupations Code, is amended by amending Subsection (2)(A)
32 and adding Subdivision (A-1) to read as follows:

1 Sec. 110.152. LIST AND LICENSE REQUIREMENTS. The council shall:

2 (1) maintain a list of sex offender treatment providers under Section 110.161; and

3 (2) develop and implement by rule under Subchapter G:

4 (A) topic-specific training requirements for providers working with juveniles
5 [license requirements]; [and]

6 (A-1) license requirements; and

7 (B) procedures for sex offender treatment providers.

8 SECTION 38. Section 110.157, Occupations Code, is amended to read as follows:

9 Sec. 110.157. CONTINUING EDUCATION PROGRAMS. The council shall design and conduct
10 continuing education programs for sex offender treatment providers. Continuing education programs
11 shall not serve as a substitute for the training curriculum required for initial licensure. Continuing
12 education programs shall offer topics specific for specialized populations, including juveniles, females,
13 and individuals with developmental or intellectual disabilities.

14 SECTION 39. Section 110.164, Occupations Code, is amended by adding Subsection (c) to read
15 as follows:

16 (c) The council shall develop or adopt a dynamic risk assessment tool for use as part of an
17 assessment battery to be administered in determining that a juvenile adjudicated for a sexual offense
18 and ordered to register under Chapter 54A, Family Code, will be subject to registration requirements.

19 SUBCHAPTER E. INTERAGENCY ADVISORY COMMITTEE

20 SECTION 40. Section 110.302, Occupations Code, is amended by amending Subsection (c) to
21 read as follows:

22 (c) The Texas Board of Criminal Justice may vote to exempt employees of the Texas
23 Department of Criminal Justice from a specific licensing requirement imposed under this section if the
24 board determines that the requirement causes financial or operational hardship on the agency. The
25 Texas Juvenile Justice Department [~~Youth Commission~~] may not exempt any employee of the
26 commission from a licensing requirement imposed by this section for any reason.

27 (c) The governing board of the Texas Juvenile Justice Department [~~Youth Commission~~] may
28 vote to exempt employees of the Texas Youth Commission from a specific licensing requirement
29 imposed under this section if the board determines that the requirement causes financial or
30 operational hardship on the agency. The Texas Board of Criminal Justice may not exempt any
31 employee of the Texas Department of Criminal Justice from a licensing requirement imposed by this
32 section for any reason.

1 SECTION 41. Subchapter H, Chapter 62, Code of Criminal Procedure, is repealed.

2 SECTION 42. Section 37.304, Education Code, as added by Acts 2007, 80th Leg., R.S., Ch. 1240
3 (H.B. [2532](#)), Sec. 3, eff. June 15, 2007, and as added by Acts 2007, 80th Leg., R.S., Ch. 1291 (S.B. [6](#)), Sec. 3,
4 eff. September 1, 2007, is repealed.

5 SECTION 43. This Act takes effect September 1, 2017.

COMMENTARY

Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses

SECTION 1 – Code of Criminal Procedure, Article 62.001(5) removes any reference to delinquent conduct as a reportable conviction and adds (5-a) to clarify that the Family Code Chapter 54A will control juvenile sex offender registration. Article 62.001(10)(B)(ii) is removed to clarify that juvenile sex offender registration will be controlled by Family Code Chapter 54A.

SECTION 2 – 11, 13, 14, 16, 17, 18, 19 – Code of Criminal Procedure, Articles 62.002, 62.005, 62.007, 62.051, 62.052, 62.053, 62.054, 62.062, 62.063, 62.152, 62.301, 62.403, 62.404, 62.405, 62.408 contain conforming changes to reflect the removal of any references to delinquent conduct and adds language referring to the new Chapter 54A of the Family Code. Also, any mention of the former Texas Youth Commission to the Texas Juvenile Justice Department has been updated.

Comment

This bill amends the Code of Criminal Procedure removing Subchapter H from Article 62 and placing the hearing and order requirements dealing with juvenile sex offender registration into a newly proposed Chapter 54A to the Texas Family Code. These conforming amendments of Article 62 Code of Criminal Procedure reflect changes throughout the chapter resulting from the creation of new Chapter 54A Family Code.

SECTION 12 – Code of Criminal Procedure, Article 62.101 removes any references to delinquent conduct. Article 62.101(5)(c)(1) is removed and replaced with Article 62.101(d) referring to registration under the Family Code.

Comment

The new provision, applicable only to juveniles, changes the duty to register from the 10th anniversary of the date on which the disposition order is entered or the person completes the terms of the disposition, whichever is later to the 5th anniversary.

SECTION 15 – Code of Criminal Procedure, Article 62.402(b) adds language to make registration for all reportable juvenile adjudications non-public.

Comment

The new provision limits registration to non-public if registration is required.

SECTION 20 – Education Code 37.302 adds references to new Chapter 54A of the Family Code and removes language regarding juveniles registering under Code of Criminal Procedure, Article 62.

SECTION 21 – Under prior law, Section 37.304 of the Education Code made removal to an alternative education program mandatory for at least one semester for a registered youth under court supervision. Related Section 37.305 allowed discretionary removal for a registered youth not under court supervision. As amended, Education Code 37.303 authorizes, but not require, a school district to remove a student who is a registered sex offender from the regular classroom. This change would

eliminate the distinction regarding whether the registered youth is under court ordered supervision or not and permits school district removal determinations to be made on a case-by-case basis in accordance with district policy.

SECTION 22 – Education Code 37.305 is redesignated as Section 37.304 and removes language of Court Supervision.

SECTION 23, 24, 25, 26 – Renumbers Sections in the Education Code with the appropriate new numbers.

Comment

Education Code Sections 37.302-37.309 are amended to reflect changes resulting from creation of new Chapter 54A Family Code. Also, allows the school district discretion in removing a child from the regular classroom.

SECTION 27 – Family Code 51.073(d-1) changes language to reflect the new Chapter 54A.

SECTION 28 - Family Code 54.03 – Subsection (k) has been added to refer to the new Chapter 54A of the Family Code.

Comment

Family Code 54.03 adds language to specify that adjudication for an enumerated reportable sexual offense does not result in automatic requirement to register as a juvenile sex offender. Instead, registration is authorized only upon court order issued accordance with the procedures outlined in new Chapter 54A, Family Code.

SECTION 29 – Family Code Section 54.0405 revises language that a condition of probation may require successful completion of sex offender treatment. It removes the language regarding psychological counseling. It also removes, in light of registration procedures under Chapter 54A, the reference to Article 62 of Code of Criminal Procedure. It further defines sex offender treatment. Subsection (j) was added to describe the process by which the court and the parties will receive the report and what the report should include.

Comment

It was found that across Texas there is not always uniformity in treatment for juvenile sex offenders. This amendment allows for consistent results across the state. The unsuccessful or successful completion of treatment process is laid out with the guidelines to be followed by the provider, the district attorney and the court.

SECTION 30 – Family Code 54.0501 is amended to allow the court to which the child's determinate sentence community supervision has been transferred to enter orders under new Chapter 54A.

SECTION 31 – Title 3, Family Code is amended by adding a new chapter 54A. Language from Code of Criminal Procedure Article 62 has been recreated in Family Code 54A.

Comment

The new provisions change the timing of the hearing, the burden of requesting the hearing and the burden of proof and persuasion. As added, new Chapter 54A requires the prosecutor to file a written motion to request a registration hearing after receipt of an unsuccessful discharge notice from sex offender treatment or upon the notice of a subsequent adjudication of a reportable offense. Procedurally, the prosecutor has the burden of persuasion and is required to prove by a preponderance of evidence that public safety is increased by registration. After the hearing, the court must consider all relevant evidence and balance public safety with the potential harm to the juvenile in making its decision to require non-public registration.

If registration is ordered, the juvenile is subject to the registration requirements set out in Article 62, Code of Criminal Procedure. Non-public registration information is not public information and may not be posted on the Internet or released to the public. Access to information regarding the juvenile registrant is restricted to use by law enforcement, criminal justice agencies, the Council on Sex Offender Treatment, the Department of Family and Protective Services and public or private institutions of higher education.

The status of the registration of person who is subject to public registration as a result of an adjudication of delinquent conduct prior to September 1, 2017 shall become non-public. The prosecutor is authorized to file a motion to request sex offender registration of a person with an out-of-state adjudication for a reportable offense or a substantially similar offense as defined in Chapter 54A. Also, the prosecutor may appeal a denial of the state's motion to require registration. Consistent with prior law, Chapter 54A authorizes and sets for the basis for a motion for deregistration for early termination of the obligation to register. A conflict of law provisions clarifies that the provisions of Chapter 54A will prevail.

SECTION 32 – Family Code 58.003(n) is amended to reflect changes resulting from creation of new Chapter 54A.

SECTION 33 – Government Code 411.1473 is amended to reflect changes resulting from creation of new Chapter 54A Family Code.

SECTION 34 – Human Resources Code 245.053 is amended to reflect changes resulting from creation of new Chapter 54A.

SECTION 35 – Occupations Code 110.001 adds definitions for sexual behavior educator/paraprofessional.

Comment

It was found that across Texas there is not always access to sex offender treatment and the definitions were being used differently. This amendment allows uniform results across the state.

SECTION 36– Occupations Code 110.151 adds language for standards for treatment of sex offenders also to apply to residential programs as well as outpatient programs.

SECTION 37 – Occupations Code 110.152 adds language to require the council to also develop and implement topic-specific training requirements for providers working with juveniles.

SECTION 38 – Occupations Code 110.157 defines continuing education programs and their limitations.

SECTION 39 – Occupations Code 110.164 requires council to develop or adopt a uniform dynamic risk assessment tool to be used for juvenile offenders.

Comment

The above amendments and qualifications will allow for uniform results across the state.

SECTION 40 – Occupations Code 110.302 updates the agency name from the former Texas Youth Commission to the Texas Juvenile Justice Department.

SECTION 41 – Repeals Subchapter H, Article 62, Code of Criminal Procedure.

SECTION 42 – Repeals former Section 37.304 of Education Code in light of the proposed amendment regarding school placement of a registered sex offender.

SECTION 43 – Provides for a September 1, 2017 effective date.



Appendices

APPENDIX A: House Bill 1144 (84th R.S.)

AN ACT

relating to establishing a task force to examine the adjudication, disposition, and registration of juvenile sex offenders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. TASK FORCE ON IMPROVING OUTCOMES FOR JUVENILES ADJUDICATED OF SEXUAL OFFENSES. (a) In this Act:

(1) "Juvenile sex offender" means a person subject to the jurisdiction of a juvenile court for conduct that constitutes an offense for which registration as a sex offender is required under Chapter 62, Code of Criminal Procedure.

(2) "Task force" means the Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses.

(b) The Task Force on Improving Outcomes for Juveniles Adjudicated of Sexual Offenses is established. The purpose of the task force is to make policy recommendations to improve the outcomes for juvenile sex offenders after studying:

(1) the adjudication and disposition processes and programs for juvenile sex offenders;

(2) counseling, mental health, or other services provided by the state or local juvenile probation departments to juvenile sex offenders;

(3) the sex offender registration process for juveniles; and

(4) any other issue related to improving the outcomes for juvenile sex offenders.

(c) The task force is composed of the following members:

(1) the executive director of the Texas Juvenile Justice Department or the executive director's designee;

(2) the commissioner of the Department of Family and Protective Services or the commissioner's designee;

(3) one representative designated by the Crime Records Service of the Department of Public Safety who has experience with the department's sex offender registry;

(4) one representative designated by the Council on Sex Offender Treatment;

(5) one representative designated by Children's Advocacy Centers of Texas;

(6) one representative designated by the Texas Association for the Protection of Children;

(7) one representative designated by Texans Care for Children;

(8) one private provider of juvenile sex offender treatment from a rural county and one private provider of juvenile sex offender treatment from an urban county, appointed by the governor;

(9) one judge from a rural county and one judge from an urban county, appointed by the governor;

(10) one law enforcement official from a rural county and one law enforcement official from an urban county, appointed by the governor;

(11) one prosecutor from a rural county and one prosecutor from an urban county, appointed by the governor;

(12) one juvenile probation officer from a rural county and one juvenile probation officer from an urban county, appointed by the governor;

(13) one juvenile public defender from a rural county and one juvenile public defender from an urban county, appointed by the governor; and

(14) one academic researcher from an accredited university who specializes in juvenile justice, appointed by the governor.

(d) The governor shall designate a member of the task force to serve as presiding officer.

(e) The presiding officer may designate additional experts to serve as advisors to the task force.

(f) A person designated to make an appointment of a member of the task force shall make the appointment not later than the 60th day after the effective date of this Act. The designated person shall fill a vacancy in the task force or a vacancy in the position of presiding officer of the task force by the appointment of another person with the same qualifications as the original appointee.

(g) The presiding officer shall call the initial meeting of the task force on or before December 1, 2015. The task force shall meet at the times and places that the presiding officer determines are appropriate.

(h) A member of the task force is not entitled to compensation but may receive reimbursement for the member's actual and necessary expenses incurred in attending meetings of the task force and performing other official duties authorized by the presiding officer of the task force, if funding is available.

(i) The task force may request meeting facilities, data, clerical assistance, and other assistance from any department, agency, institution, office, or political subdivision of this state.

(j) The task force may consult with any relevant experts and stakeholders, including:

(1) juvenile sex offenders;

- (2) family members of juvenile sex offenders;
- (3) mental health experts;
- (4) public school district administrators; and
- (5) higher education administrators.

(k) State funds may not be appropriated for purposes of the task force. The task force may apply for, receive, and accept grants of funds or other contributions as appropriate to assist in the performance of its duties. The task force may contract for consultants or technical assistance.

(l) The task force is not subject to Chapter 2110, Government Code.

SECTION 2. DUTIES OF TASK FORCE. (a) The task force shall:

(1) solicit and review information and hear testimony relevant to the purposes of the task force from individuals, state and local agencies, community-based organizations, and other public and private organizations;

(2) review the adjudication and disposition processes and programs for juvenile sex offenders, including:

(A) the consistency in adjudication and disposition processes across the state;

(B) the training provided to judges, law enforcement officers, parole and probation officers, and other juvenile service providers on the differences between juvenile and adult sex offenders regarding the potential for rehabilitation through treatment; and

(C) training provided to judges, law enforcement officers, parole and probation officers, and other juvenile service providers regarding the most effective way to protect the community by reducing recidivism rates among juvenile sex offenders;

(3) review juvenile sex offender registration, including:

(A) the effectiveness of juvenile sex offender registration in reducing recidivism rates;

(B) statistical information regarding juveniles required to register as sex offenders;

(C) the impact of juvenile sex offender registration on a juvenile, including a juvenile's ability to access education, obtain housing, and gain employment; and

(D) the impact of labeling a juvenile as a juvenile sex offender on the family of the juvenile;

(4) review counseling, mental health, or other services provided to juvenile sex offenders, including:

(A) the effectiveness of the services in the rehabilitation of juvenile sex offenders and the reduction of recidivism rates; and

(B) the current shortage of juvenile sex offender service providers; and

(5) review statistical information regarding the frequency of juvenile sex offenders being victims of abuse or neglect or witnesses to family violence.

(b) The task force shall adopt rules necessary to fulfill the task force's duties under this Act.

SECTION 3. REPORT. (a) The task force shall prepare a report that includes:

(1) a description of the activities of the task force;

(2) the findings and recommendations of the task force, including proposed policy recommendations related to:

(A) the provision of coordinated support services to juvenile sex offenders;
and

(B) the most effective strategy to reduce recidivism rates and improve outcomes for juvenile sex offenders; and

(3) any related proposals for legislation or other matters the task force considers appropriate.

(b) Not later than December 1, 2016, the task force shall deliver the report of the task force's findings and recommendations to:

(1) the governor;

(2) the lieutenant governor;

(3) the speaker of the house of representatives;

(4) the standing committees of each house of the legislature with primary jurisdiction over criminal justice matters;

(5) the executive director of the Texas Department of Criminal Justice;

(6) the executive director of the Texas Juvenile Justice Department;

(7) each state agency and nonprofit organization represented on the task force; and

(8) any other appropriate agency of this state.

SECTION 4. EXPIRATION. The task force is abolished and this Act expires September 1, 2017.

SECTION 5. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas

Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

Appendix B: Active Registrant Profile

Active registrants (adult and juvenile) on the Texas Sex Offender Registry	86,917
Active registrants with only juvenile offenses on their registration record (no subsequent adult offense)	3,484
Active registrants with a juvenile adjudication and a subsequent adult offense on their registration record	219
Active registrants with only juvenile offenses on their registration record, (no subsequent adult offense), that currently have juvenile non-public orders	471
Active registrants with only juvenile offenses on their registration record, (no subsequent adult offense), broken down by offense of registration:	
Texas reportable offense	3,053
Substantially similar offense (i.e., out-of-state, federal, military, etc.)	429
Board or court-ordered duty to register	8
Active registrants that are currently under 17 years of age (using the primary date of birth)	26

Source: Department of Public Safety
November 22, 2016

APPENDIX C: Task Force Contact Roster

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APPENDIX D: Witness List

Sex Offender Registration and Court Procedures

Ronald Potts

Parent

Jeremy Potts

Witness

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Clinical and Forensic Psychology
Licensed Sex Offender Treatment Provider

Josh Gravens

Executive Director
Organized Justice

David Gonzalez

Attorney, Sumpter and Gonzalez, LLP
(CLE Article Submission)

Michele Deitch. J.D., M.Sc.

Senior Lecturer
LBJ School of Public Affairs and UT School of Law
(Written Article Submission)

Mental Health, Treatment and Service Providers

Stacey Lewis, MSW, LCSW

Margaret Cohenour, MSW, LCSW

Lena Pope, Tarrant County

Dr. Jane F. Silovsky, Ph.D.

Director, National Center on Sexual Behavior in Youth
Professor, Center on Child Abuse and Neglect
University of Oklahoma Health Sciences Center

Dawn Thomforde

Business Development Associate
Justice Works Youth Care

Victim Issues

Anonymous Witness

Victim/Family Member

Identity Protected Upon Request

Aja Gair

Senior Director of Residential Services
Austin's Children's Shelter – The SAFE Alliance

Mark Odom

Deputy Director - Victim's Services Division
Texas Department of Criminal Justice

Manuel ("Mito") Gonzalez

The Law Office of Mito Gonzalez
McKinney, Texas

**APPENDIX E:
SORNA Federal Register Notice (August 1, 2016)**

DEPARTMENT OF JUSTICE

[Docket No. OAG 151; AG Order No. 3714–2016]

RIN 1121-AA87

**Office of the Attorney General;
Supplemental Guidelines for Juvenile
Registration Under the Sex Offender
Registration and Notification Act**

AGENCY: Department of Justice.

ACTION: Final guidelines.

SUMMARY: The Sex Offender Registration and Notification Act (“SORNA”) requires registration of individuals convicted of sex offenses as adults and, in addition, registration of juveniles adjudicated delinquent for certain serious sex offenses. SORNA also provides for a reduction of justice assistance funding to eligible jurisdictions that fail to “substantially implement” SORNA’s requirements, including the juvenile registration requirement, in their sex offender registration programs. These guidelines provide guidance regarding the substantial implementation of the juvenile registration requirement by eligible jurisdictions. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking will examine the following factors when assessing whether a jurisdiction has substantially implemented SORNA’s juvenile registration provisions: policies and practices to prosecute as adults juveniles who commit serious sex offenses; policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and other policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes. By affording jurisdictions greater flexibility in their efforts to substantially implement SORNA’s juvenile registration requirement, the guidelines will further SORNA’s public safety objectives in relation to serious juvenile sex offenders and facilitate jurisdictions’ substantial implementation of all aspects of SORNA. The guidelines concern only substantial implementation of SORNA’s juvenile registration requirement and do not affect substantial implementation of SORNA’s registration requirements for individuals convicted of sex offenses as adults.

DATES: *Effective Date:* August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Luis C.deBaca, Director, Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking; Office of Justice Programs, United States Department of Justice, Washington, DC, (202) 514–4689.

SUPPLEMENTARY INFORMATION:

Background

The Sex Offender Registration and Notification Act (“SORNA”), title I of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109–248, was enacted on July 27, 2006. SORNA (42 U.S.C. 16901 *et seq.*) establishes minimum national standards for sex offender registration and notification in the jurisdictions to which it applies. “Jurisdictions” in the relevant sense are the 50 states, the District of Columbia, the five principal U.S. territories, and federally recognized Indian tribes that satisfy certain criteria. 42 U.S.C. 16911(10).

SORNA provides a financial incentive for eligible jurisdictions to adopt its standards, by requiring a 10 percent reduction of federal justice assistance funding to an eligible jurisdiction if the Attorney General determines that the jurisdiction has failed to “substantially implement” SORNA. 42 U.S.C. 16925(a). SORNA also directs the Attorney General to issue guidelines and regulations to interpret and implement SORNA. *See id.* 16912(b). To this end, the Attorney General issued the *National Guidelines for Sex Offender Registration and Notification* (“SORNA Guidelines”), 73 FR 38030, on July 2, 2008, and the *Supplemental Guidelines for Sex Offender Registration and Notification* (“Supplemental Guidelines”), 76 FR 1630, on January 11, 2011. The Justice Department’s Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (“SMART Office”) assists all jurisdictions in their SORNA implementation efforts and determines whether they have substantially implemented SORNA’s requirements in their registration and notification programs. *See* 42 U.S.C. 16945; 73 FR at 38044, 38047–48; 76 FR at 1638–39.

In addition to requiring registration based on adult convictions for sex offenses, SORNA includes as covered “sex offender[s]” juveniles at least 14 years old who have been adjudicated delinquent for particularly serious sex offenses. 42 U.S.C. 16911(1), (8); *see id.* 16913 (setting forth registration requirements). In relation to the juvenile registration requirement, as in other contexts, the SMART Office “consider[s] on a case-by-case basis whether jurisdictions’ rules or

procedures that do not exactly follow the provisions of SORNA . . . ‘substantially’ implement SORNA, assessing whether the departure from a SORNA requirement will or will not substantially disserve the objectives of the requirement.” 73 FR at 38048.

The SORNA Guidelines explained, in particular, that substantial implementation of SORNA need not include registration of juveniles adjudicated delinquent for certain lesser offenses within the scope of SORNA’s juvenile registration provisions. The Guidelines stated that jurisdictions can achieve substantial implementation if they cover offenses by juveniles at least 14 years old that consist of engaging (or attempting or conspiring to engage) in a sexual act with another by force or the threat of serious violence or by rendering unconscious or involuntarily drugging the victim. *Id.* at 38050. This interpretation of substantial implementation addressed concerns about the potential registration of juveniles in some circumstances based on consensual sexual activity with other juveniles, which is outside the scope of the coverage required by the Guidelines. *See id.* at 38040–41.

The Supplemental Guidelines included a subsequent change affecting the treatment of all persons required to register on the basis of juvenile delinquency adjudications. SORNA authorizes the Attorney General to create exemptions from SORNA’s requirement that information about registered sex offenders be made available to the public through Web site postings and other means. *See* 42 U.S.C. 16918(c)(4), 16921(b). The Supplemental Guidelines noted that the SORNA Guidelines had endeavored to facilitate jurisdictions’ compliance with SORNA’s registration requirement for “juveniles at least 14 years old who are adjudicated delinquent for particularly serious sex offenses,” but that “resistance by some jurisdictions to public disclosure of information about sex offenders in this class has continued to be one of the largest impediments to SORNA implementation.” 76 FR at 1636. The Attorney General accordingly exercised his exemption authority “to allow jurisdictions to exempt from public . . . disclosure information concerning sex offenders required to register on the basis of juvenile delinquency adjudications.” *Id.* This exemption did not change the requirement that such juveniles be registered and that information about them be transmitted or made available “to the national (non-public) databases of sex offender information, to law enforcement and supervision agencies,

and to registration authorities in other jurisdictions.” *Id.* at 1637.

Based on additional experience with SORNA implementation, and further reflection on the practicalities and effects of juvenile registration, the Department of Justice proposed and solicited public comment on new supplemental guidelines modifying the approach the SMART Office will take in assessing whether a jurisdiction has substantially implemented SORNA’s juvenile registration requirement; those proposed supplemental guidelines were published in the **Federal Register** on April 11, 2016, at 81 FR 21397. The public comment period closed on June 10, 2016. Following consideration of the public comments received, the Department of Justice is now finalizing these supplemental guidelines. For the reasons explained below, the new guidelines will allow consideration of a broader range of measures that may protect the public from serious juvenile sex offenders in determining substantial implementation.

While most states provide for registration of some sex offenders based on juvenile delinquency adjudications, many do not or do so only on a discretionary basis. See SMART Office, SMART Summary: Prosecution, Transfer, and Registration of Serious Juvenile Sex Offenders 10–11, 24–29 (Mar. 2015) (“SMART Juvenile Summary”), www.smart.gov/pdfs/smartjuvenileessum.pdf. Too rigid an approach to implementation of the juvenile registration aspect of SORNA, which affects a limited subclass of sex offenders, may conflict at a practical level with the objective of implementing SORNA’s more broadly applicable reforms, which affect the whole universe of convicted sex offenders. This occurs when a jurisdiction’s unwillingness or inability to implement the juvenile registration requirement discourages or stymies further efforts to implement SORNA generally, because the deficit regarding juvenile registration alone precludes approval of the jurisdiction as having substantially implemented SORNA. Moreover, the juvenile registration requirement is in some respects unique in terms of its scope and rationale and the potential for furthering its objectives by other means.

First, juveniles may be subject to prosecution in either of two distinct justice systems—the juvenile justice system or the adult criminal justice system. The SORNA Guidelines provide that registration jurisdictions may substantially implement SORNA’s juvenile registration requirement by registering persons at least 14 years old at the time of the offense who are

adjudicated delinquent for an offense amounting to rape or its equivalent, or an attempt or conspiracy to commit such an offense. See 73 FR at 38041, 38050. Practically all states authorize or require adult prosecution for many or all such juveniles. See SMART Juvenile Summary 5–9, 16, 19–23. Where juveniles are prosecuted as adults, the resulting convictions are treated as adult convictions under SORNA, and SORNA’s general provisions require the sex offender to register. See 73 FR at 38050.

Consequently, a jurisdiction may advance SORNA’s public safety goals in relation to serious juvenile sex offenders not only by prescribing mandatory registration for those offenders adjudicated delinquent, but also by prosecuting such offenders in the adult criminal justice system. Consider a jurisdiction that normally subjects sex offenders in SORNA’s juvenile registration category to adult prosecution and conviction, with resulting registration, but that does not have mandatory registration for the relatively few offenders in this category who are proceeded against in the juvenile justice system. With respect to most sex offenders, the jurisdiction protects the public through registration at least as effectively as a jurisdiction that proceeds against more offenders as juveniles and has mandatory registration based on delinquency adjudications, because all individuals convicted of qualifying sex offenses as adults are required to register. In some respects, a jurisdiction oriented towards adult prosecution of the most serious juvenile sex offenders may more effectively advance SORNA’s public safety objectives, because prosecution as an adult also makes available the more substantial incarceration and supervision sanctions of the adult criminal justice system. But if mandatory juvenile registration is treated as a *sine qua non* of substantial SORNA implementation, that jurisdiction could not be approved as having substantially implemented SORNA.

A second feature unique to juvenile sex offenders is that SORNA requires registration only for certain juveniles who are adjudicated delinquent for particularly serious sex offenses—that is, sex offenses that are “comparable to or more serious than aggravated sexual abuse” (or attempt or conspiracy to commit such offenses). 42 U.S.C. 16911(8). Jurisdictions that allow for discretionary registration of juveniles adjudicated delinquent for sex offenses may in practice capture many of the juveniles in SORNA’s juvenile

registration category—especially those who pose the most danger to others—in their registration schemes. Rather than simply rejecting a jurisdiction’s approach to juvenile registration for having a discretionary aspect, examination of these registration programs as applied would allow the SMART Office to determine whether, when considered as part of a jurisdiction’s overall registration scheme, this variance does or does not substantially disserve SORNA’s purposes.

Considering discretionary juvenile registration might appear to be inconsistent with the response to public comments accompanying the issuance of the SORNA Guidelines, which stated that registration as “a matter of judicial discretion” is insufficient to substantially implement SORNA’s juvenile registration requirement. 73 FR at 38038. However, that response addressed comments urging that discretionary registration should in itself be considered sufficient implementation of SORNA’s requirements, “ignor[ing] what SORNA provides on this issue, and instead do[ing] something different that the commenters believe to be better policy.” *Id.* That is not the approach of these guidelines, which contemplate that the SMART Office will consider the full range of pertinent measures a jurisdiction may adopt, and do not assume that simply replacing a mandatory registration requirement with a discretionary one achieves in substance what SORNA requires. For example, consider a jurisdiction that (i) largely requires registration by sex offenders in SORNA’s juvenile registration class because those offenders are likely to be prosecuted and convicted in the adult criminal justice system, (ii) allows registration on a discretionary basis for sex offenders who remain in the juvenile justice system, and (iii) provides other effective post-release monitoring and identification measures for juvenile sex offenders as discussed below. In assessing whether such a jurisdiction has substantially implemented SORNA’s juvenile registration requirement, it is appropriate to take into account the jurisdiction’s discretionary registration of adjudicated delinquents along with other factors, and doing so does not conflict with the prior rejection of approaches that “ignore[] what SORNA provides.” *Id.*

A third feature specific to the juvenile context is the prevalence of juvenile confidentiality provisions, which can limit the availability of information about the identities, locations, and

criminal histories of juvenile sex offenders. Potential consequences of these confidentiality provisions include that (i) law enforcement agencies may lack information about certain sex offenders in their areas that could, if known, assist in solving new sex crimes and apprehending the perpetrators; (ii) sex offenders may be less effectively discouraged from engaging in further criminal conduct, because the authorities do not know their identities, locations, and criminal histories; and (iii) offenders' histories of sexual violence or child molestation, which might disqualify them from positions giving them control over or access to potential victims (such as childcare positions), may not be disclosed through background check systems or affirmative notice to appropriate authorities. These confidentiality provisions accordingly may negatively affect the achievement of SORNA's public safety objectives. See 73 FR at 38044–45, 38060–61. Congress's decision to subject certain juvenile sex offenders to SORNA's registration requirements was an effort to overcome risks to the public posed by juvenile confidentiality requirements that Congress considered too broad. See H.R. Rep. No. 109–218, pt. 1, at 25 (2005).

A jurisdiction that does not implement juvenile registration in the exact manner specified in SORNA's juvenile registration provisions may nevertheless adopt other measures that address the underlying concerns as part of its substantial implementation of SORNA. For example, a jurisdiction may have means of monitoring or tracking juvenile sex offenders following release, such as extended post-release supervision regimes or address-reporting requirements, that may not incorporate all aspects of SORNA's registration system, but that may nevertheless help law enforcement agencies to identify the sex offenders in their areas and the perpetrators of new sex offenses. Confidentiality requirements for juvenile records may be appropriately defined and limited so as not to conceal risks to potential victims from persons who committed serious sex offenses as juveniles.

In sum, a number of factors are reasonably considered in ascertaining whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions, which have not been articulated or given weight to the same extent under previous guidelines. Accordingly, in these guidelines, the Attorney General expands the matters that the SMART Office will consider in determining substantial implementation of this SORNA requirement. This

expansion recognizes that jurisdictions may adopt myriad robust measures to protect the public from serious juvenile sex offenders, and will help to promote and facilitate jurisdictions' substantial implementation of all aspects of SORNA.

Summary of Comments on the Proposed Supplemental Guidelines

Twenty-six comments were received from various agencies, organizations, and individuals. A number of the comments were favorable to the proposed supplemental guidelines' expansion of the matters that the SMART Office will consider in determining whether registration jurisdictions have substantially implemented SORNA's juvenile registration provisions. Some of the comments urged that the guidelines should go further, such as by eliminating all registration of juvenile sex offenders. As discussed below, comments of this nature seek actions that are beyond the legal authority of the Department of Justice. Such comments are not germane to the formulation of these guidelines, which explain how the SMART Office will approach the determination whether registration jurisdictions have substantially implemented the existing juvenile registration requirement under SORNA.

The specific comments, with their identifying designations on www.regulations.gov shown in brackets, are as follows:

#1. This comment [DOJ–OAG–2016–0004–0005], submitted by 15 individuals identified as researchers with expertise on juvenile sexual offending, contains three specific recommendations for revising these guidelines:

(i) The first recommendation is to remove all requirements for registration of youth adjudicated delinquent for sex offenses, based on studies the researchers describe as showing that such registration is ineffective and has adverse consequences. However, the Attorney General has no authority to repeal or amend federal laws by issuing guidelines, or to nullify SORNA's juvenile registration provisions in particular. See 73 FR at 38036–38, 38040–41, 38050.

(ii) The second recommendation is to remove all language in these guidelines that could encourage waiver of juveniles to adult criminal court, based on a study the researchers describe as implying that such waiver policies do not improve public safety and are subject to bias. However, these guidelines do not encourage prosecution of juveniles as adults. Rather, the guidelines (A)

recognize that practically all states authorize or require adult prosecution for many or all juveniles in SORNA's juvenile registration category, and (B) provide that policies or practices to prosecute as adults juveniles who commit serious sex offenses are appropriately considered in determining whether a jurisdiction has substantially implemented SORNA's juvenile registration requirement, because adult prosecution may result in registration and the availability of adult criminal sanctions.

(iii) The third recommendation is that language should be included in the guidelines supporting the provision of evidence-based treatment services to youth adjudicated delinquent of sex offenses and their caregivers, based on studies the researchers describe as demonstrating the efficacy of treatment. However, the guidelines as drafted already give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses—measures that may include treatment.

#2. This comment [DOJ–OAG–2016–0004–0020], from two individuals, refers to and states support for the recommendations appearing in comment #1, discussed above.

#3. This comment [DOJ–OAG–2016–0004–0022], submitted by the National Juvenile Justice Prosecution Center, states that these guidelines are a positive development in balancing public safety with the developmental nature and special needs of juvenile offenders, because they provide a more well-rounded approach to safety and greater flexibility.

#4. This comment [DOJ–OAG–2016–0004–0008], submitted on behalf of 14 organizations and individuals concerned about the inclusion of youth on sex offender registries, includes four specific recommendations and the conclusion that “youth registration should end.” Many of the adverse consequences of juvenile registration asserted by these commenters would appear to be related to public disclosure of juvenile sex offenders' identities and offenses as opposed to registration per se. The Attorney General has already provided in earlier supplemental guidelines under SORNA that registration jurisdictions need not publicly disclose information about sex offenders required to register on the basis of juvenile delinquency adjudications. See 76 FR at 1636–37. The specific recommendations in this comment are as follows:

(i) The first recommendation is to hold a full public hearing on these guidelines before finalizing them.

However, a public hearing is not necessary to conclude that the measures identified in these guidelines are appropriately considered in determining whether jurisdictions have substantially implemented SORNA's juvenile registration provisions. The comment does not explain what information relevant to the formulation of these guidelines would be conveyed in a hearing that has not or could not have been provided in the submitted public comments on these guidelines, and does not otherwise provide a persuasive reason to refrain from issuing these guidelines pending a hearing.

(ii) The second recommendation is to convene a task force to study and recommend best practices for youths charged with sexual offenses. However, convening a task force is not necessary to conclude that these guidelines' more flexible approach to determining substantial implementation is warranted. The comment does not explain what information relevant to the formulation of these guidelines would be obtained by a task force that has not or could not have been provided in the submitted public comments, and does not otherwise provide a persuasive reason to refrain from issuing these guidelines pending the creation of a task force and completion of its work.

(iii) The third recommendation is to revise the guidelines to explicitly incentivize evidence-based rather than harmful practices, such as a policy that eschews juvenile registration but "ensures that every young person adjudicated of a sexual offense undergoes a validated evaluation and is placed in risk and needs-based programming." As noted above, the Attorney General has no authority to nullify SORNA's juvenile registration requirement, *see* 73 FR at 38036–38, 38040–41, 38050, but in determining whether registration jurisdictions have substantially implemented that requirement, the guidelines as drafted give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses. These policies and practices may include evaluation and programming measures like those proposed by these commenters. To the extent this recommendation is directed against the guidelines' reference to adult prosecution of juvenile sex offenders, the response is the same as with comment #1 above. These guidelines do not encourage prosecution of juveniles as adults. Rather, the guidelines recognize the prevalence of policies and practices of adult prosecution of serious juvenile sex offenders, and they treat such policies and practices as relevant

factors in determining whether a jurisdiction has substantially implemented SORNA's juvenile registration requirement.

(iv) The fourth recommendation is to move towards a system that reassures states that they will not lose federal justice assistance funding if they do not register youth and discourages state policies that require youth registration. However, the Attorney General and the SMART Office are charged by law with seeking the substantial implementation of SORNA by registration jurisdictions, including SORNA's juvenile registration provisions. *See* 42 U.S.C. 16912, 16923–26, 16945. It is not consistent with this responsibility to assure states globally that they will not lose grant funding if they do not implement SORNA's juvenile registration requirement or to discourage them from implementing that requirement. *See* 73 FR at 38036–38, 38040–41, 38050.

#5. The authors of this comment [DOJ–OAG–2016–0004–0023] identify themselves as the parents of a 16-year-old who is currently incarcerated in a juvenile facility, and who is subject to lifetime inclusion on a sex offender registry, because he had pornographic pictures on his phone. The commenters express concern that this will ruin his life, including preventing him from being in a high school graduation ceremony or attending college. The concerns expressed in the comment relate to actions taken pursuant to state law and do not weigh against issuing guidelines that afford greater flexibility in determining substantial implementation of SORNA's juvenile registration provisions. SORNA itself does not require registration based on juvenile adjudications for pornography offenses like that described in this comment. In terms of offense coverage, it suffices for substantial implementation of SORNA's juvenile registration requirement if jurisdictions require registration of persons at least 14 years old at the time of the offense based on delinquency adjudications for offenses amounting to rape or its equivalent or an attempt or conspiracy to commit such an offense. *See* 73 FR at 38040–41, 38050. SORNA imposes no restrictions on registrants' attending high school or college. The Attorney General has provided in previously issued supplemental guidelines for SORNA implementation that jurisdictions need not publicly disclose information about persons required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37.

#6. This comment [DOJ–OAG–2016–0004–0011], submitted on behalf of the

Pueblo of Laguna, recommends (i)–(ii) amending state and federal law to ensure that youth sex offenders are placed on registries only after an individualized assessment, with periodic review of youth sex offender registrations, (iii) using youth sex offender registration information solely for law enforcement purposes and not disclosing it publicly, (iv) creating an impartial body to ensure that all registration information is accurate and not misleading and to remove youth offenders from registries as soon as registration requirements have ended, (v) advising juvenile sexual offense defendants of the consequences of a conviction or adjudication, including registration, community notification, and residency requirements, (vi) taking account of the need to protect the safety of people convicted of sex offenses in deciding the method and scope of community notification, and (vii) providing training on relevant youth issues to officers involved in the investigation of sexual offenses. Regarding (i)–(ii), the Attorney General has no legal authority to amend state or federal laws, and in particular, cannot nullify SORNA's juvenile registration provisions. *See* 73 FR at 38036–38, 38040–41, 38050. However, these guidelines will enable the SMART Office to consider a broader range of measures in determining whether registration jurisdictions have substantially implemented those provisions. Regarding (iii), (v), and (vi), which largely concern community notification, the Attorney General has provided in previous SORNA guidelines that registration jurisdictions need not publicly disclose information about sex offenders required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37. Also, regarding (v), SORNA imposes no restrictions on where sex offenders may live ("residency requirements"). Regarding (iv)–(vii) generally, the measures proposed do not conflict with SORNA or these guidelines and registration jurisdictions are free to adopt them.

#7. This comment [DOJ–OAG–2016–0004–0019] states opposition to sex offender registration generally, "for all but high-risk offenders," and in particular states that the commenter is vehemently against registration for persons committing sexual crimes as juveniles. The comment does not weigh against issuance of these guidelines, which explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA's juvenile

registration provisions, and allow consideration of an expanded range of measures in that determination.

#8. This comment [DOJ–OAG–2016–0004–0012] proposes eliminating requirements for juvenile registration and supporting well-delivered specialized treatment. However, the Attorney General has no authority to eliminate SORNA’s juvenile registration provisions. See 73 FR at 38036–38, 38040–41, 38050. These guidelines give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, measures that may include treatment.

#9. The authors of this comment [DOJ–OAG–2016–0004–0017] identify themselves as the parents of a 15-year-old boy who is required to register as a sex offender for 10 years, because of a child pornography adjudication based on his sending unsolicited photos of his genitalia to a female classmate. The commenters express concern about adverse effects on their son’s life, including limitation of employment opportunities and unsupervised association with a younger brother, and they reproduce and endorse the recommendations set forth in comment #1. Regarding those recommendations, see the discussion of comment #1 above. The comment otherwise relates to actions taken pursuant to state law and does not weigh against issuance of these guidelines, which afford greater flexibility in determining substantial implementation of SORNA’s juvenile registration provisions. SORNA does not require registration based on juvenile adjudications for offenses like that described in this comment. In terms of offense coverage, it suffices for substantial implementation of SORNA’s juvenile registration requirement if jurisdictions require registration of persons at least 14 years old at the time of the offense based on delinquency adjudications for offenses amounting to rape or its equivalent or an attempt or conspiracy to commit such an offense. See 73 FR at 38040–41, 38050. SORNA imposes no restrictions on registrants’ qualification for employment or on unsupervised association with younger children. The Attorney General has provided in previously issued supplemental guidelines for SORNA implementation that jurisdictions need not publicly disclose information about persons required to register on the basis of juvenile delinquency adjudications. See 76 FR at 1636–37.

#10. This comment [DOJ–OAG–2016–0004–0004] describes the changes in these guidelines as a step in the right direction, but it characterizes SORNA as

“misguided” in relation to juvenile offenders and encourages exploration of other methods of sexual abuse prevention that are less likely to be counterproductive for juvenile offenders and that are focused only on juvenile offenders determined after judicial review to be a risk. However, the Attorney General does not have the authority to override the legislative judgments embodied in SORNA, including SORNA’s juvenile registration provisions. See 73 FR at 38036–38, 38040–41, 38050. The comment also states that a number of statements in these guidelines are premised on the assumption that juveniles will sexually reoffend, an assumption that the comment says is not supported by research. However, these guidelines are not premised on an assumption about the extent of re-offense by juvenile sex offenders. Rather, they explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA’s juvenile registration provisions and allow consideration of an expanded range of measures in making that determination. Finally, the comment includes a technical suggestion that a definition of “sexual act” should be included in the background information part of these guidelines, right after the term is used. The preamble cross-references the original SORNA Guidelines, 73 FR at 38050, which provide the relevant definition of “sexual act”. The comment does not provide a reason why the definition of this term should be reproduced in these supplemental guidelines.

#11. This comment [DOJ–OAG–2016–0004–0024], submitted on behalf of Human Rights Watch, recommends deleting two of the three specific factors these guidelines give weight to—policies and practices to prosecute as adults juveniles who commit serious sex offenses, and policies and practices to register juveniles adjudicated delinquent for serious sex offenses. In support of this recommendation, the comment argues that adult prosecution of juveniles and registration of juveniles have various adverse effects on juveniles. However, the comment provides no persuasive reason why the guidelines should not give weight to these factors. In determining whether registration jurisdictions have substantially implemented SORNA’s juvenile registration requirement, policies and practices of adult prosecution of serious juvenile sex offenders may be relevant because they may result in registration and the availability of adult criminal sanctions,

and policies and practices of registering juvenile sex offenders may be relevant because, even if discretionary, they may in practice capture many of the juveniles in SORNA’s juvenile registration category in the jurisdiction’s registration scheme.

#12. This comment [DOJ–OAG–2016–0004–0015], submitted on behalf of the National District Attorneys Association, views the guidelines favorably as providing states with flexibility to comply with SORNA and protect community safety while maintaining the integrity of their juvenile justice systems.

#13. This comment [DOJ–OAG–2016–0004–0026], submitted on behalf of the Lambda Legal Defense and Education Fund, joins in the recommendations of comment #4. The comment particularizes some of the recommendations of comment #4 to reference specifically LGBTQ youth and it asserts that criminal prosecution and punishment and registration for sex offenses operate more harshly against LGBTQ youth. The response to this comment is essentially the same as the response to comment #4.

#14. This comment [DOJ–OAG–2016–0004–0016], submitted on behalf of the Association for the Treatment of Sexual Abusers, generally criticizes juvenile registration and adult prosecution of juveniles, states support for giving jurisdictions greater discretion whether to register children adjudicated for sexual crimes, thanks the SMART Office for its continued efforts in developing a more responsive and nuanced policy, and provides four specific recommendations:

(i) The first recommendation is to develop appropriate assessments taking account of a youth’s clinical, family, and environmental situation to formulate effective, individualized treatment and management plans for youth. However, the guidelines as drafted give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, which may include the measures described in this comment.

(ii) The second recommendation is to remove requirements for broad-based youth registration and notification. However, SORNA itself requires registration by certain juveniles adjudicated delinquent for serious sex offenses. The Attorney General has no authority to change what SORNA provides. These guidelines are responsive to the concerns expressed in this comment, within the bounds of the law, in allowing consideration of a broader range of measures in

determining whether jurisdictions have substantially implemented SORNA's juvenile registration requirement. The Attorney General has already provided in earlier guidelines under SORNA that registration jurisdictions need not engage in public notification regarding juveniles required to register on the basis of delinquency adjudications. *See* 76 FR at 1636–37.

(iii) The third recommendation is to include language that supports the use of evidence-based treatment and management strategies for youth. However, the guidelines as drafted already give weight to policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses, which may include evidence-based treatment and management strategies.

(iv) The fourth recommendation is to remove language that promotes the waiver of youth to adult courts. The response to comment #1 includes discussion of this issue.

#15. This comment [DOJ–OAG–2016–0004–0021], submitted on behalf of Stop It Now!, supports the recommendations appearing in comment #1. Those recommendations are discussed above in connection with comment #1.

#16. The author of this comment [DOJ–OAG–2016–0004–0010] criticizes the sex offender registration system of his state as adversely impacting juveniles. The comment asks for a direction to the 50 states, the District of Columbia, and the territories to create a process to remove all their registered sex offenders who were convicted when juveniles from every registry by January 2018 and to stop adding new juveniles immediately. The Attorney General has no legal authority to issue such a direction to registration jurisdictions.

#17. This comment [DOJ–OAG–2016–0004–0006], submitted on behalf of the Annie E. Casey Foundation, refers to the letter discussed as comment #1 above, states concerns and recommendations similar to those appearing in that letter, and particularly emphasizes the commenter's concern about prosecution of juveniles as adults. The response to comment #1 discusses these matters.

#18. This comment [DOJ–OAG–2016–0004–0014], submitted by the Attorney General of Alaska, (i) endorses the more flexible approach of these guidelines to determining substantial implementation of SORNA's juvenile registration provisions, (ii) notes that the SMART Office has previously found that Alaska was not compliant with SORNA's juvenile registration requirement, and (iii) provides information about Alaska's system in support of a different conclusion under the new guidelines.

Following the issuance of these guidelines, the SMART Office will entertain requests for substantial implementation determinations regarding juvenile registration in conformity with the new guidelines, including requests from jurisdictions previously subject to negative determinations under the pre-existing substantial implementation standards.

#19. The author of this comment [DOJ–OAG–2016–0004–0018] identifies himself or herself as the parent of a son adjudicated for distributing child pornography, based on sending pictures of himself to a classmate he had a crush on when he was 14. The comment states that the son will have to register as a sex offender for at least 10 years as a result, and that he now cannot attend the high school he attended over the last year or other schools in the area. The comment urges that a child should not be labeled a sex offender for sending a picture of himself to a friend. The response to this comment is essentially the same as the response to comments #5 and #9 above. The concerns expressed in the comment relate to actions taken pursuant to state law and do not weigh against issuing guidelines that afford greater flexibility in determining substantial implementation of SORNA's juvenile registration provisions. SORNA does not require registration based on juvenile adjudications for offenses like that described in the comment, does not restrict where juvenile sex offenders may go to school, and does not require public disclosure of identity or other information for juveniles required to register on the basis of delinquency adjudications.

#20. This comment [DOJ–OAG–2016–0004–0003] recommends that the SMART Office seek a change in the law so that states cannot publicly post information about juvenile registrants on Web sites unless the registrants are tried and convicted in adult court. The comment is not germane to these guidelines, which are concerned with substantial implementation of the juvenile registration requirement under existing federal law (SORNA). The Attorney General has already provided in earlier guidelines under SORNA that registration jurisdictions need not publicly post information about persons required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37. The comment also suggests that the SMART Office tell states that they will be out of compliance and lose 10% of federal funding if they have restrictions on where registrants can live. The SMART Office has no authority to do so because SORNA contains nothing that either

prohibits or requires residency restrictions.

#21. This comment [DOJ–OAG–2016–0004–0007], submitted on behalf of the National Criminal Justice Association, states support for these guidelines. The comment notes that some states have not yet achieved substantial implementation of SORNA because of SORNA's mandatory registration requirements for specific juvenile offenses. The comment states that by allowing the SMART Office to assess juvenile registration in a more holistic manner and to review comprehensively relevant state policies and practices, the guidelines “will go a long way in allowing states . . . to achieve substantial implementation with the requirements of SORNA . . . in a way that protects community safety.” Noting that many states have fallen short of compliance in relation to required registration for adjudicated juveniles, the comment describes these guidelines as a welcome clarification about the review the SMART Office will undertake in assessing whether a jurisdiction has substantially implemented SORNA's juvenile registration provisions.

#22. This comment [DOJ–OAG–2016–0004–0025] criticizes sex offender registration for anyone under 20. As explained in the responses to other comments, the Attorney General has no authority to change sex offender registration laws, and in particular, no authority to eliminate SORNA's juvenile registration requirement.

#23. This comment [DOJ–OAG–2016–0004–0002] includes pictures of an apparently injured individual, with text representing that the injuries resulted from an attack occasioned by his inclusion on a sex offender registry. The comment says that this is what all people labeled as sex offenders can expect from their government. The comment is not germane to these guidelines, which explain how the SMART Office will determine whether registration jurisdictions have substantially implemented SORNA's juvenile registration requirement. If the point of the comment is to assert a risk of violence against sex offenders resulting from public disclosure of their identities, the Attorney General has provided in earlier guidelines that jurisdictions need not make such disclosure for sex offenders required to register on the basis of juvenile delinquency adjudications. *See* 76 FR at 1636–37.

#24. This comment [DOJ–OAG–2016–0004–0013], submitted by the Secretary of Public Safety and Homeland Security 72 of the State of Virginia, states support

for these guidelines. The comment recounts that Virginia has been determined to be out of compliance with SORNA because of state statutes that do not automatically require juvenile registration. The comment characterizes as a very welcome development the guidelines' provision for determining substantial implementation with SORNA based on a more comprehensive view of adjudicated juveniles and expresses confidence that the new approach will be beneficial to Virginia in reaching substantial implementation of SORNA. As noted above in the response to a similar comment from the Attorney General of Alaska (#18), the SMART Office will entertain requests for substantial implementation determinations regarding juvenile registration in conformity with the new guidelines, including requests from jurisdictions previously subject to negative determinations under the pre-existing substantial implementation standards.

#25. This comment [DOJ-OAG-2016-0004-0009] is submitted on behalf of "Just Kids," described as a national coalition made up of legal experts, child advocates, juvenile justice policy experts, and victim advocates concerned about including youth on sex offender registries. The commenters overlap with those submitting comment #4 and the comment is similar in substance to comment #4. The response is essentially the same as that provided above to comment #4.

#26. This comment [DOJ-OAG-2016-0004-0027] states that underage children should not have to suffer lifelong consequences for a mistake and asks for the enactment of a law providing that underage children shown to be productive citizens during their rehabilitation can be blemish-free later in their adult productive life. The Attorney General does not have the authority to enact laws and the comment is not germane to the issuance or formulation of guidelines concerned with the determination whether registration jurisdictions have substantially implemented SORNA's juvenile registration requirement.

In sum, the public comments received did not provide any persuasive reason to change or delay finalization of the proposed guidelines, which are finalized here without change.

Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act

If a jurisdiction does not register juveniles at least 14 years old who are adjudicated delinquent for particularly

serious sex offenses in exact conformity with SORNA's provisions—for example, because the jurisdiction uses a discretionary process for determining such registration—the SMART Office will examine the following factors when assessing whether the jurisdiction has nevertheless substantially implemented SORNA's juvenile registration requirements: (i) Policies and practices to prosecute as adults juveniles who commit serious sex offenses; (ii) policies and practices to register juveniles adjudicated delinquent for serious sex offenses; and (iii) other policies and practices to identify, track, monitor, or manage juveniles adjudicated delinquent for serious sex offenses who are in the community and to ensure that the records of their identities and sex offenses are available as needed for public safety purposes. Consistent with the requirements for other aspects of a jurisdiction's program that do not exactly follow SORNA's provisions, a jurisdiction that seeks to rely on these factors in establishing substantial implementation must identify any departure from SORNA's requirements in its submission to the SMART Office and "explain why the departure from the SORNA requirements should not be considered a failure to substantially implement SORNA." 73 FR at 38048. The SMART Office will determine that a jurisdiction relying on these factors has substantially implemented SORNA's juvenile registration requirement only if it concludes that these factors, in conjunction with that jurisdiction's other policies and practices, have resulted or will result in the registration, identification, tracking, monitoring, or management of juveniles who commit serious sex offenses, and in the availability of the identities and sex offenses of such juveniles as needed for public safety purposes, in a manner that does not substantially disserve SORNA's objectives.

Dated: July 26, 2016.

Loretta E. Lynch

Attorney General.

[FR Doc. 2016-18106 Filed 7-29-16; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF JUSTICE

[[OMB Number 1100-NEW]]

Agency Information Collection Activities; Proposed eCollection; eComments Requested Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: U.S. Department of Justice and various components.

ACTION: 30-Day notice.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, Department of Justice will be submitting a Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" to OMB for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*).

DATES: The purpose of this notice is to allow for an additional 30 days for public comment until August 31, 2016.

FOR FURTHER INFORMATION CONTACT: If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jerri Murray, Department Clearance Officer, lynn.murray2@usdoj.gov; or the DOJ Desk Officer at 202-395-1743. Written comments and/or suggestions can also be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 205630 or sent to OIRA_submissions@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The information collection activity will garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, 73 or focus attention on areas where

APPENDIX F:
Federal Advisory Committee on Juvenile Justice
FACJJ Subcommittee Recommendation (May 2016)

May 2016

Recommendation from: Research/Dual Status Subcommittee

Recommendation to: Federal Advisory Committee on Juvenile Justice

RECOMMENDATION: Existing federal law should be amended to explicitly exempt juveniles (all persons who were below the age of 18 at the time of their offense) from all sex offender registration, community notification, and residency restriction laws.

Rationale: Since the passage of federal law requiring the registration of juvenile sex offenders, a wealth of studies have shown no net measurable public safety benefits but have identified multiple unintended negative consequences to youth, victims of sexual abuse and families of both:

Youth are different from adults

Offender registries and community notification laws were developed with adult predatory offenders in mind. But juveniles are not younger versions of adult predatory sex offenders. Studies of adolescent brain development reveal that children and teenagers are impulsive, emotional, and present-oriented. Their developing brains often ignore, discount, or fail to comprehend the consequences of their actions for themselves or others. Sexual offending by juveniles is generally less aggressive, less deviant, often experimental, and occurs over shorter periods of time, compared to the predatory offending envisioned by proponents of registries. As the adolescent brain matures, risky and illegal behaviors, including sexual offending, tend to disappear into adulthood.

Juvenile sex offenders are at very low risk of reoffending

Recidivism rates for juvenile sex offenders are consistently low, less than 10% in most studies, with most re-offenses of a non-sexual nature. Studies show that only 2.5% to 5% of juvenile sex offenders are reconvicted for a sex crime.

Registration does not reduce recidivism

Studies indicate that the registration of juvenile sex offenders is not associated with reductions in future sex crimes, or other crimes, and may in fact create barriers to the types of positive development, education, employment and interpersonal relationships which reduce risks for reoffending. Consequently, registries produce no measurable public safety benefit.

Registration undermines the charging process

Studies indicate that prosecutors are more likely to drop charges, reduce charges, or engage in plea bargaining to avoid triggering juvenile sex offender registration requirements, thus circumventing the law's intent, creating inconsistent patterns of practice and potentially undermining public confidence in the juvenile justice system.

Registration has life-long negative impacts on juveniles

Juveniles placed on sex offender registration experience social stigma, isolation, depression, financial burdens and suicidal thoughts. They face numerous obstacles to completing education, seeking employment, obtaining housing, and maintaining stable family relationships. Together these effects may increase risks for criminal conduct and minimize a young person's long term chances of becoming contributing members to society.

Registration may harm victims of sexual offending

When juveniles engage in sexually abusive behaviors, victims are often members of the immediate or extended family due, in large part, to the unique developmental underpinnings of problematic youth

sexual behavior. As a result, the registration, community notification and restrictions on housing and other community activities imposed on youth may also have profound harmful and lasting consequences for victims of sexual offending.

Registration laws across the country are a hodgepodge of inconsistency

While intended to promote uniformity and consistency, the opposite has occurred. Only seventeen states are substantially in compliance with the federal requirements and five states have refused to cooperate. Of those that do comply, or are struggling to comply, there is wide variation in the offenses included, the costs required, the length of registration, and the specific restrictions on the juvenile offender.

Federal requirements limit states' abilities to craft local solutions to youth offending

States seeking to align their law and policy with research on reducing risks for reoffending, protecting victims and improving youth outcomes are disadvantaged by federal requirements for the registration of youth and potential penalties for failure to comply. Removing juveniles from federal registry requirements would allow states to craft evidence-based law and policy to protect public safety and improve youth and victim outcomes.

Registration is an expensive unfunded mandate on states

Many states have struggled with the costs associated with establishing or expanding their offender registry and adding additional law enforcement resources to ensure offender compliance. Furthermore, states not in compliance are subject to hefty financial penalties that cut funding from other important programs designed to enhance public safety.

CONCLUSION:

Existing federal law should be amended to explicitly exempt all persons who were below the age of 18 at the time of their offense from all sex offender registration, community notification, and residency restriction laws. Federal juvenile sex offender registration laws are inconsistent with research and evidence based practice; fail to promote public safety; have long-term adverse impacts on registrants; may harm victims of intrafamilial abuse; are not cost effective; limit states' abilities to craft evidence-based policy and practice, are being substantially resisted or undermined at the state level; and fundamentally ignore the burgeoning science of adolescent brain development. The time is ripe to remove juveniles from federal registry requirements.

Sources: *"Raised on the Registry, The Irreparable Harm of Placing Children on Sex Offender Registries in the US," Human Rights Watch, 2013; "Child Maltreatment, Our Minds Are Made Up So Don't Confuse Us With The Facts: Commentary Concerning Children with Sexual Behavior Problems and Juvenile Sex Offenders," Mark Chaffin, Sage Publications, 2009; "Revising Harmful Policy: An Inside Look At Changes to US Juvenile Sex Crime Laws," Elizabeth J. Letourneau, Presentation to the Federal Advisory Committee on Juvenile Justice, March 18, 2016; "Youths Who Sexually Abuse: What Works," Sue Righthand, Presentation to the Federal Advisory Committee on Juvenile Justice, March 18, 2016; "Community Based Services for Youth with Problematic Sexual Behavior, Child Victims and Caregivers," Jane F. Silovsky, Presentation to the Federal Advisory Committee on Juvenile Justice, March 18, 2016; "Juvenile Sex Offenders and SORNA, National Conference of State Legislatures," May 2011; "Costs And Benefits Of Subjecting Juvenile to Sex-Offender Registration and Notification," Richard B. Belzer, R Street Policy Study #41, September 2015; "Improving Illinois's Response to Sexual Offenses Committed By Youth: Recommendations for Law, Policy and Practice," Illinois Juvenile Justice Commission, March 2014; "Some States Refuse to Implement SORNA, Lose Federal Grants," Prison Legal News, September 2014.*