The Weight of “Registered Sex Offender” Labels

Harris County Collateral Consequences Seminar

October 22, 2025

Scott C. Smith – scs@defenselawyer.net

Myths versus The Reality of Sex Offender Registration

“I would have much rather gone to prison sentence and left a free person, than taken a probation with a lifetime of sex offender registration.”

Many a client have told me this or something similar. At first blush, sex offender registration (SOR) seems sensible and not particularly onerous. The Texas Court of Criminal Appeals has held that SOR is not as a criminal penalty, but merely a reasonable civil public safety measure with no significant punitive effects. This euphemistic distinction was used to justify its holding that SOR laws may be retroactively applied without violating the Ex Post Facto clauses of the US and Texas Constitutions. Rodriguez v. State, 93 S.W.3d 60 (Tex. Crim. App. 2002).

The reality is far different. The statutory consequences of SOR include limitations on employment, residency restrictions, and travel restrictions. However, the non-statutory consequences are usually even worse. These include social stigma, isolation, and limitations on employment which are much broader than those mandated by statute. Combined they greatly impede a defendant’s ability to live happy and healthy lives. Perhaps the cruelest consequences of all come from the collective punishment of the client’s family and loved ones who are frequently also greatly impacted by the defendant’s registration status when they also suffer from financial problems caused by employment restrictions, travel restrictions and stigma.

The Court of Criminal Appeals based its holding in Rodriguez on the argument that SOR protects vulnerable members of the public from “the unique threat sex offenders present to public safety, the high rate of recidivism among sex offenders, [and] the low incidence of rehabilitation among sex offenders.” *Id at 68–69*. The Texas legislature has also relied on this myth to steadily increased the number of offenses which require registration, the length of registration duty, and the problematic consequences of registration since Texas first created a sex offender registry in 1991. (Currently the Texas registry boasts over 100,000 registrants.)

Again, reality is vastly different than the myths upon which SOR is built. Though some of the people listed in the registry are guilty of violent sexual acts of predation, many are guilty of far less serious offenses such as consensual sexual contact between two people of relatively small differences in age where one is under the age of 17. The Texas sex offender registry tosses them all into the same bucket. Inclusion is determined by the offense for which the person was convicted or placed on probation,

which has been shown to not correlate to the risk that the person presents. Experts in risk assessment estimate that less than 10% of those on the registry present a high risk of offense. Those seeking more information on evidence-based studies which debunk the myths upon which sex offender registration laws are based, should read The Council on Sex Offender Treatment White Paper (The Council on Sex Offender Treatment, White Paper, AWA and SORNA
Presented to the Texas Senate Criminal Justice Committee, June 10, 2010), The Model Penal Code: Sexual Assault and Related Offenses (Submitted by the Council to the membership of The American Law Institute for consideration at the 2021 Annual Meeting on May 17-18 and Jun 7-8, 2021), and consult with an expert, such as any of the 23 risk assessment specialists who have been certified to conduct deregistration risk assessment by the Texas Council on Sex Offender Treatment. (The aforementioned materials will be attached to this paper.)

What is The Sex Offender Registry?

It is important to understand that every state in the country has its own set of sex offender registration laws and maintains its own registry. Additionally, federal law requires sex offender registration for federal offenses and in various other situations. The interplay of the state and federal laws creates a complex web of registration duties that is frequently misunderstood. The Texas registry can be accessed at https://sor.dps.texas.gov/.The U.S. Department of Justice's Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking maintains a public website which allows for searching of sex offender registries for all 50 states, the District of Columbia, U.S. Territories, and Indian Country at https://www.nsopw.gov/.

Trial Judge and Defense Counsel Duties Regarding SOR

For a long time, many courts held defense counsel were not required to provide advice regarding the so-called collateral consequences resulting from criminal prosecutions because they were merely civil, non-punitive matters. Some even argued that it was not ineffective assistance of counsel to provide erroneous advice about such matters. The law regarding immigration consequences of criminal prosecutions provides an excellent example of this line of thinking.

Then in 2010, the Supreme Court noted the dramatic changes in immigration law in the prior 90 years, the "expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation." Padilla v. Kentucky, 559 U.S. 356, 360, 130 S. Ct. 1473, 1478, 176 L. Ed. 2d 284 (2010). The Supreme Court noted that though deportation is technically not a civil sanction, it a particularly "severe penalty," which is "intimately related to the criminal process." Id. at 1481. In Padilla, the Supreme Court held that advice regarding deportation falls within the ambit of the Sixth Amendment right to counsel and must be provided to a defendant prior to deciding whether to plead guilty. Id at 1482. It is no exaggeration that much of what the Supreme Court said in Padilla about immigration, applies equally to sex offender registration, which came into effect in Texas in 1991. In some ways, SOR is worse than deportation.

Prior to accepting a guilty plea, courts are required to inform the defendant that the defendant "will be required to meet the registration requirements of Chapter 62, if the defendant is convicted of or placed on deferred adjudication for an offense for which a person is subject to registration under that chapter." See Tex. Code Crim. Pro. Ann. art. 26.13. Unfortunately, only "substantial compliance" is required and there are no requirements that courts inform defendants how long registration will be required or what harsh consequences of SOR they may experience. No Texas decisions yet require defense counsel to affirmatively warn clients of sex offender registration and its many oppressive effects, though some cases have provided relief when defense counsel provide erroneous information about SOR. See *Ex parte Covey*, No. PD-0145-09, 2010 WL 1253224 (Tex. Crim. App. Mar. 31, 2010) (not designated for publication).

Though Texas' current law sets a low and vague bar for providing SOR advice, truly assisting our clients and achieving the highest standard of professionalism possible requires a good deal more. This article is intended to assist the practitioner in achieving this ideal.

The Weight of SOR

How SOR affects each client individually varies depending on their circumstances. Most clients experience more than one of the typical effects which can be categorized as residency restrictions, employment limitations, travel restrictions, and social stigma.

Residency Restrictions

Residential restrictions are likely to be some of the first consequences that a newly registered person experiences. Clients should be advised of these prior to entering any plea which will require SOR. Some may be forced to move from their current residence. Uninformed clients sometimes purchase new homes and later find out that they cannot live in them because of zoning restrictions. Many low-income clients become homeless as a result of these restrictions.

Prior to entering any plea agreements for probation, it is best to review the court's standard conditions of probation to see if they will prohibit the client from continuing to reside in his current home or with other family members who are children. If there are conditions that will require the client to move after being placed in probation, it is best to inform the client ahead of time and consider asking the court to modify these conditions. Even if the court does not require the client to move, defense counsel should also check to see if local municipal ordinances will prohibit residency in the client's current home. The client should be warned that an increasing number of cities are passing ordinances which ban registered sex offenders from living in or entering large swaths of the city. See Tex. Loc. Gov't Code Ann. § 341.906.

Employment Limitations

The barriers to gainful employment are some of the greatest problems that many registered sex offenders will face. Some employment barriers are explicitly set forth by statute. Tex. Code Crim. Pro. Ann. art. 62.063 sets out a list of prohibited occupations. (It was recently expanded in the last legislative session.) Other barriers are found in licensing requirements which may prevent the client from holding a license necessary for occupations ranging from plumbers to electricians to nursing. See Tex. Occ. Code Ann. § 53.021A.

The greatest barriers to employment, however, tend to be non-statutory. Simply put, many employers do not want to hire "sex offenders" regardless of their personal attributes or the circumstances of their offense. Many employers willing to hire registered sex offenders, will terminate them when the word gets out because they do not want to allow their businesses to suffer from being known to employ "sex offenders." These biases can make severely limit the options open to registrants to find gainful employment and make keeping existing jobs difficult. At a bare minimum, this issue should be discussed with any client charged with an offense that requires SOR prior to deciding whether to accept or reject a plea agreement offer.

Travel Restrictions

Travel restrictions are a frequently overlooked consequence of SOR. Sometimes these restrictions are only irritating, disappointing or embarrassing. Multiple clients have recounted stories of arriving in a foreign country on a business trip with colleagues or a pleasure trip with a significant other, only to be informed that they would not be admitted into the country because of their registration statute. Other clients encounter more significant problems when restrictions prevent them from visiting family members who reside in other countries or states. The clients most profoundly impacted by travel restrictions tend to be those who need to travel for their occupation, including pilots, truck drivers and people who must travel to corporate offices in other countries. An assessment of how to deal with these restrictions typically must be done on a case-by-case basis because the analysis requires consideration of the laws of various states, US federal law and the laws of various other countries. While it is often not practical to contemplate all of the issues that may arise with travel, clients should be advised that future travel needs may be complicated or entirely prohibited as a result of being convicted or placed on probation for an offense requiring SOR. (How to deal with this problem is discussed in great detail below.)

Social Stigma

The consequence which tends to be most problematic and affect the most people on the registry is stigma of being a registered sex offender. Of course, every client who is convicted or placed on probation must deal with the stigma of a criminal record which will only rarely be removed from public view. However, SOR creates a much more pernicious stigma. The scarlet letter of the "registered sex offender" label implies a repulsive dangerousness that continues to exist, as contrasted with some prior violation of the law. Additionally, SOR information tends to be more broadly disseminated, easily accessible and cross-referenced by address.

This stigma tends to impact the registrant's children and spouses greatly. They are easily connected to registrants because they usually live in an address that is publicly listed as the residence of a sex offender. Registrants' children are frequently shunned or mocked by other children in their neighborhoods and schools. Registrants are frequently prohibited from attending important and meaningful events such as school functions and sporting events. They may be prevented from accompanying their children when they are hospitalized. Spouses are sometimes castigated for remaining in or forming new relationships with registered sex offenders. It is not uncommon for spouses to experience problems in their jobs because of their marriage to sex offenders, especially if they happen to be educators.

There is no simple solution to these problems. The "scarlet letter" effect of SOR tends to isolate the registrant and his or her family. It can burden spouses and rupture marriages and other relationships. It is extremely difficult for a registered sex offender to establish healthy intimate relationships because the new partner will quickly feel the burden of the registry. SOR can cause children to grow up ostracized and isolated. This can lead to deep depression and other mental health problems. One thing I always do is recommend that anyone having to start registering join Texas Voices for Reason and Justice, a statewide, non-profit, volunteer organization devoted to promoting a more balanced, effective, and rational criminal justice system. TVRJ advocates for common sense, research-based laws and policies through education, legislation, litigation, and support for persons required to register for sex related offenses as well as for members of their families. (https://texasvoices.org/) Sex offender treatment providers can sometimes help a client manage the stresses of registration, but sometimes it may be helpful to connect the client with a therapist who can assist with stress management.

SOR restrictions can impact registrants in a multitude of other ways that do not fall in any of the categories of problems described above. The list continues to grow as new laws and regulations are passed and may change over the course of a registrant's lifetime as the registrant's needs and conditions evolve. For example, an aging registered sex offender who develops a medical condition may not be able to enter a group home where specialized care and treatment is provide because strict requirements placed on that home make admission impractical. See Tex. Health & Safety Code Ann. § 325.004.

Easing The Weight for a Client

There are many limitations on the ability of defense counsel to avoid these problems. Even judges who are sympathetic cannot waive registration requirements. At a bare minimum, defense counsel should correctly assess whether a conviction or probation will trigger a duty to register, determine how long registration requirements will remain in effect, and determine whether the client will ever be eligible to petition to terminate registration. Though I do now want clients to feel that their future is hopeless, they deserve to be provided with this information and warned of the significant risk that they will experience one or more of the problems described above. Only with this knowledge can they intelligently weigh the benefits and risks of accepting a plea agreement versus going to trial and plan for the future.

When negotiating on behalf of clients, it is important to understand how small differences in plea agreements may have enormous consequences for the client. For example, when entering a plea in a case where the client is charged with multiple counts of possession of child pornography, pleading to two counts or concurrent probations will disqualify the client from ever being able to petition to terminate registration and will expose the client to a duty of having to register quarterly every year. In such a case, simply negotiating to enter a plea to only one of the counts will change the registration requirement to only once a year and leave the client with some hope of being able to terminate his duty to register at some point in the future. To negotiate effectively, defense counsel should determine:

1. Is there a way to negotiate for a plea to an offense that does not require SOR? (See Tex. Code Crim. Pro. Ann. art. 62.001(5) for a list of Texas offenses that require registration.)
2. If registration cannot be avoided entirely, is there a way to negotiate a plea to an offense that requires less than lifetime registration? (In Texas, the registration duty ends on the 10th anniversary of the date on which the person completes his sentence or for life. See Tex. Code Crim. Pro. Ann. art. 62.101)
3. If registration cannot be avoided entirely, is there a way to negotiate a plea which leaves the client in a petition to petition for early termination of the registration sometime in the future? (See the attached “Tiered Offense Chart” for a list of offenses which are eligible for early termination.)
4. If registration cannot be avoided entirely, can defense counsel negotiate for terms that will help make the weight of registration lighter, such as reducing his registration duty from quarterly to annually, enabling the registrant to remain in his current residence or have contact with his children?

Advising Clients on How to Comply with Registration Requirements

If it is not possible to avoid SOR completely, clients should be warned that the requirements for registration are complicated and sometimes very time-consuming (such as the requirement that registrants renew their driver's license every year in person). Some of these requirements may be found scattered throughout Chapter 62 of the Texas Code of Criminal Procedure, which is quite voluminous. DPS supplements these requirements with its own regulations. Local registration authorities are known to make up their own requirements at times without any legal authority to do so. The complexity and vagueness of the numerous requirements for registration and difficulties in complying with them make it easy for clients to unwittingly fail to dot every "I" and cross every "T" can expose them to felony charges for failing to comply with them.

The basic registration duties are found in Subchapter B (62.051 – 62.065). Best practice is to provide a copy of these statutes to clients whenever they begin registration and warn that failure to comply could result in additional felony prosecution. (See 62.102.) Because mistakes are so frequently made in failing to report "online identifiers" (defined in 62.001), I take particular care to point out the requirement that these be reported and that the client is required to notify their registration authority of any changes or new identifiers within seven days. (See 62.0551.)

Some federal statutes also apply to registrants only convicted of a state offense, such as the requirement that registered sex offenders notify local registration authorities prior to traveling internationally. International travel for registered sex offenders is particularly complicated. Many countries will not allow their entry at all. Those seeking to travel to a country which will allow admission, must provide advance notice of their intention to travel under 34 U.S.C.A. § 20914, 28 CFR § 72.6 and § 72.8. Additionally, special passport requirements, which include noting their registration status on the passport, apply to registered sex offenders. See 22 U.S.C.A. § 212b.

The differences between each state's registration laws can make interstate travel complicated. It is best to warn clients who travel to any other state that they must comply with the registration requirements of that state, which may be entirely different from the requirements of Texas. Some other states may not require them to register at all, others may allow them to visit for a week without registering, and others will require them to register very shortly arrival. I discourage clients from traveling to any other states which require registration there in addition to their registration in Texas, because it can complicate the deregistration process considerably because a Texas deregistration will not necessarily result in their removal from the registry of the other state.

Because each state's registration laws are different, people required to register in Texas may not be required to register in other states and people required to register in other states may not be required to register in Texas. Some clients seek relief from the onerous registration duties and consequences in Texas by moving to another state that does not require registration for them or where they may be able to take advantage of deregistration procedures which are not available to them in Texas. This approach to relief requires careful research of the other state's laws. I also warn client who consider this approach that they will DPW will not remove from the Texas sex offender registry just because they move out of state. Their continued listing on the Texas registry will still leave them exposed to several of the burden of registration, such as restrictions on international travel.

Deregistration

For those who land on the Texas sex offender registry, relief may be obtained after sentencing in limited circumstances. Some clients may be able to petition for early termination of their registration duty under subchapter I of Chapter 62 of the Texas Code of Criminal Procedure. See Tex. Code Crim. Proc. Art. 62.401 et seq. To be eligible, clients must

1) Have been convicted or placed on probation for an offense found on DPS' Tiered Offense Chart. This is a list of offenses prepared pursuant to Tex. Code Crim. Proc. Art. 62.402;
2) The offense must be a reportable conviction or adjudication for which a person must register under Texas law for a period that exceeds the minimum required registration period under federal law. See Tex. Code Crim. Proc. Art. 62.403(b);
3) Have not more than one "reportable adjudication or conviction." Tex. Code Crim. Proc. Art. 62.403(b) (It is important to note that multiple counts are considered multiple offenses); and
4) Have been prosecuted in a Texas state court.

Prior to petitioning, the client must first apply for approval by the Texas Council on Sex Offender Treatment (CSOT) and submit to a risk assessment by an approved deregistration evaluation specialist after receiving approval by CSOT. See Tex. Code Crim. Pro. Art. 62.403. The application can be obtained from the CSOT website. (https://www.hhs.texas.gov/about/advisory-committees/council-sex-offender-treatment.)

Youthful offenders and juveniles may also seek exemption from registration requirements or deregistration in certain circumstances. See Tex. Code Crim. Proc. Articles 62.301, 62.351, 62.353, 42.017, and 42.12.

Conclusion

The vast number of SOR requirements and the harmful consequences they cause create exceptionally burdensome problems for almost every registrant and their families. Because the ex post facto clauses of the Texas and US constitutions provide no protection against these, their weight is likely to grow heavier. Until laws are guided by evidence-based knowledge as opposed to false myths, defense counsel should take every measure possible to protect clients against these ill-conceived laws.