



ST. MARY'S
UNIVERSITY

The Scholar: St. Mary's Law Review on Race
and Social Justice

Volume 20 | Number 1

Article 4

1-1-2017

Non-Sexual Predators: The Negative Implications of Required Registration for Non-Sexual Offenses

Alexandra Vargas

Follow this and additional works at: <https://commons.stmarytx.edu/thescholar>



Part of the [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Juvenile Law Commons](#), [Law and Politics Commons](#), [Law and Society Commons](#), [Legal Remedies Commons](#), and the [Sexuality and the Law Commons](#)

Recommended Citation

Alexandra Vargas, *Non-Sexual Predators: The Negative Implications of Required Registration for Non-Sexual Offenses*, 20 THE SCHOLAR 91 (2017).

Available at: <https://commons.stmarytx.edu/thescholar/vol20/iss1/4>

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in The Scholar: St. Mary's Law Review on Race and Social Justice by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact egoode@stmarytx.edu, sfowler@stmarytx.edu.

COMMENT

NON-SEXUAL PREDATORS: THE NEGATIVE IMPLICATIONS OF REQUIRED REGISTRATION FOR NON-SEXUAL OFFENSES

ALEXANDRA VARGAS*

“Every adult, whether he is a follower or a leader, a member of a mass or of an elite, was once a child. He was once small. A sense of smallness forms a substratum in his mind, ineradicably. His triumphs will be measured against this smallness; his defeats will substantiate it.”

—Erik Erikson

I.	Introduction	92
II.	Juvenile Justice: A History of Rehabilitative Measures.....	96
	A. Children Are Different	97
	B. Rehabilitation Realized	99
III.	Anatomy of a Juvenile Adjudication in Texas	100
	A. Referral and Adjudication	101

* St. Mary’s University School of Law, J.D. Candidate, May 2018; Sam Houston State University, M.S., Criminal Justice, 2015; Texas A&M University-Corpus Christi, B.S., Criminal Justice, 2011. The interest for this Comment comes from research conducted while working for the Texas Juvenile Justice Department. The author would like to thank her family for encouraging her scholarly endeavors and, most importantly, teaching the importance of helping others. Special thanks to Professor Stephanie Stevens for sharing her expertise in the juvenile justice field. Finally, the author would like to acknowledge the countless children who enter the juvenile justice system every day: “We worry about what a child will become tomorrow, yet we forget that he is someone today.” - Stacia Tauscher

B.	Record of Referral	104
IV.	Juveniles and the Sex Offender Registry	106
A.	National Sex Offender Registry	106
B.	Texas Sex Offender Registry	109
V.	Discretionary Registration in Texas	110
VI.	The Problem with Requiring Registration for Non-Sexual Offenses—An Analysis of Dangerous Legislation	113
A.	Exempting Non-Sexual Offenses Complements the Legislature’s Intent.....	114
B.	Registration for Non-Sexual Offenses Does Not Protect the Public—It Harms Juveniles.....	119
C.	Discretionary Laws Disproportionately Affect Marginalized Groups.....	123
i.	Databasing by Race and Class	123
ii.	Discrimination Against the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Community.....	124
VII.	Proposed Solutions.....	128
A.	Minimum SORNA Compliance Better Serves Juvenile Justice Rehabilitative Goals	128
B.	Remove Non-Sexual Offenses from the Definition of “Reportable Adjudication”	131
VIII.	Conclusion.....	133

I. INTRODUCTION

Registered Sex Offender. Was your initial response disgust? If so, that response is normal. Sex offenders have historically been society’s lepers.¹ Communities shun “sex offenders,” while simultaneously calling for their rehabilitation.² Sex offender registries are presumed to be necessary to protect society from “sexual predators” attempting to

1. See Hollida Wakefield, *The Vilification of Sex Offenders: Do Laws Targeting Sex Offenders Increase Recidivism and Sexual Violence?*, 1 J. SEXUAL OFFENDER CIV. COMMITMENT: SCI. & L. 141, 141 (2006), <http://www.socjournal.org> (discussing how sex offenders are “universally hated and despised”).

2. See Wakefield, *supra* note 1, at 145 (explaining sexually violent predator statutes that require civil commitment were passed with the “promise of rehabilitation as a major goal.”).

reintegrate into society after being convicted of a sexual crime.³ Would it surprise you to know, however, that some people on sex offender registries have never actually committed a sexual offense?⁴ Consider Suzanne Kearns Dewalt's story.

Suzanne is a registered sex offender from Comal County.⁵ In March of 2002, Suzanne initiated a child custody dispute against her son's father with a petition to terminate his parental rights.⁶ The father counter-claimed for sole managing conservatorship.⁷ During trial, Suzanne proffered evidence (that was conclusively rejected) suggesting her son, J.M.D., was physically and sexually abused by his father and two family members.⁸ The jury ultimately awarded sole managing conservatorship to J.M.D.'s father.⁹ Ignoring the judgment, Suzanne fled with J.M.D. to Mexico and became a fugitive.¹⁰ She was apprehended in Mexico nearly three years later and indicted for the aggravated kidnapping of J.M.D.¹¹ In 2006, she was convicted and sentenced to five years in prison.¹² After her release, Suzanne was required to register as a sex offender pursuant to Article 62 of the Texas Code of Criminal Procedure.¹³

The Texas Code of Criminal Procedure requires sex offender registration for convictions of certain non-sexual offenses—namely, unlawful restraint, kidnapping, and aggravated kidnapping—provided the victim was under the age of seventeen at the time of the offense.¹⁴

3. *See id.* at 142 (“[T]hese laws were passed as a means to decrease recidivism and promote public safety . . .”).

4. *See* TEX. CODE CRIM. PROC. ANN. art. 62.001(5)(E) (West 2017) (listing non-sexual offenses as reportable sex offenses for purposes of the sex offender registry).

5. *Dewalt v. State*, 307 S.W. 3d 437, 442 (Tex. App. 2010).

6. *Id.*

7. *Id.*

8. *See id.* at 448 (discussing Suzanne's proffer of evidence alleging abuse, which was ultimately rejected by the Court due to its prejudicial nature).

9. *Id.* at 443.

10. *See id.* (“It is undisputed that after the jury rendered its verdict and Judge Robinson ordered that Michael [J.M.D.'s father] would have sole custody of J.M.D., Dewalt did not comply with or seek appellate remedies from the ruling, but instead fled to Mexico with the child.”)

11. *Dewalt*, 307 S.W. 3d at 442.

12. *Id.*

13. *Dewalt v. State*, 417 S.W.3d 678, 681 (Tex. App. 2013); *see* TEX. CODE CRIM. PROC. ANN. art. 62.001(5)(E) (West 2017) (listing aggravated kidnapping as a registrable offense).

14. *See* TEX. CODE CRIM. PROC. ANN. art. 62.001(5)(E) (West 2017) (requiring sex offender registration for the offenses of unlawful restraint, kidnapping, and aggravated kidnapping).

Interestingly, there is no requirement that these offenses be committed with a sexual purpose.¹⁵ As a result, a person convicted of a non-sexual offense, lacking any sexual motive, may nevertheless be required to register as a sex offender.¹⁶

While Suzanne was not justified in her criminal actions, she is not a sexual predator. Despite a complete lack of sexual intent or purpose, Texas sex offender registry laws require Suzanne to register as a sex offender, prompting the same disgusted response that is common when the words “registered sex offender” are spoken.¹⁷

Shockingly, the same sex offender registry laws apply to juveniles.¹⁸ A juvenile found to have committed a registrable offense is “adjudicated delinquent” which is similar to being found “guilty” in the adult system.¹⁹ Following adjudication, the juvenile court may use its discretion to require the juvenile to register as a sex offender.²⁰ The juvenile court’s discretion to order sex offender registration is a critical distinction from the adult system.²¹ For example, a troubled teenager

15. *Id.* Section (5)(E) of the Code states that convictions under sections 20.02 (Unlawful restraint), 20.03 (Kidnapping), and 20.04 (Aggravated kidnapping) constitute reportable offenses. *Id.* However, the Code also specifically includes crimes committed with a sexual purpose in the reportable convictions category, suggesting the absence of a sexual purpose requirement in subsection (E) was a conscious decision by the legislature. *See id.* art. 62.001(5)(A) (D) (describing a range of offenses that all include a sexual purpose element).

16. TEX. CODE CRIM. PROC. ANN. art. 62.001(5)(E) (West 2017).

17. *See Wakefield, supra* note 1, at 141 (“People hate and despise [sex offenders] . . .”).

18. *See* TEX. CODE CRIM. PROC. ANN. art. 62.001 (West 2017) (enforcing registration against any person who has a “reportable conviction or adjudication,” including an adjudication of delinquent conduct or a deferred adjudication); *see also* TEX. JUV. JUST. DEP’T, GAP No. 380.8785, GENERAL ADMINISTRATIVE POLICY MANUAL, <http://www.tjjd.texas.gov/policies/gap/380/87/gap3808785.pdf> [<https://perma.cc/W4EA-7PLT>] (last visited Aug. 10, 2017) [hereinafter GAP No. 380.8785] (providing guidance on sex offender registration for juveniles); *Texas Sex Offender Registration Program*, TEX. DEP’T PUB. SAFETY, https://www.txdps.state.tx.us/administration/crime_records/pages/sexoffender.htm [<https://perma.cc/NR3A-ZFV3>] (last visited Aug. 10, 2017) (“The Sex Offender Registration Program . . . requires adult and juvenile sex offenders to register with the local law enforcement authority of the city they reside in . . .”).

19. *See generally* GAP No. 380.8785, *supra* note 18 (applying the provisions of Chapter 62 of the Texas Code of Criminal Procedure to juveniles who have an adjudication of delinquent conduct for any offense listed in Article 62.001 of the Texas Code of Criminal Procedure).

20. *See* TEX. CODE CRIM. PROC. ANN. art. 62.301 (West 2017); TEX. CODE CRIM. PROC. ANN. art. 62.352 (West 2017) (listing avenues for exemption from registration for certain juveniles).

21. *Compare* TEX. CODE CRIM. PROC. ANN. art. 62.301 (West 2017), *and* TEX. CODE CRIM. PROC. ANN. art. 62.352 (West 2017), *with* TEX. CODE CRIM. PROC. ANN. art. 62.001(5) (West 2017).

from Dallas, J.D.D., was adjudicated for aggravated kidnapping and aggravated assault with a deadly weapon in 2006.²² He conceded that he “woke up and thought, ‘this is the day I am going to rape somebody.’”²³ Regardless of his intentions, J.D.D. never committed a sexual offense.²⁴ The juvenile court judge sentenced J.D.D. to a determinate sentence in the Texas Youth Commission (TYC)²⁵ with a possible transfer to the Texas Department of Criminal Justice, but deferred the registration decision until J.D.D.’s progress at TYC could be analyzed.²⁶ Despite completing his GED, earning 17.5 credits toward his high school diploma, and participating in vocational classes providing employment-related skills, the juvenile court judge ordered J.D.D. to register as a sex offender.²⁷

While J.D.D.’s actions were both concerning and deserving of judicial intervention, the fact that Texas permits a child to register as a sex offender without having actually committed a sexual offense—despite its juvenile justice system’s rehabilitative promises²⁸—is equally concerning.²⁹ This Comment explores the confines of the Texas juvenile justice system, including one of its stated goals of rehabilitation, in conjunction with Texas’s rigid sex offender registration program as it

22. *In re J.D.D.*, Nos. 05-07-01252-CV, 05-07-1253-CV, 2008 WL 4916326, at *1 (Tex. App. Nov. 18, 2008) (unpublished).

23. *Id.*

24. *Id.*

25. The Texas Juvenile Justice Department (TJJJ) was created on December 1, 2011, pursuant to S. B. 653, and passed by the 82nd Texas Legislature. TEX. JUV. JUST. DEP’T, COMPREHENSIVE REPORT: YOUTH REENTRY AND REINTEGRATION (DEC. 1, 2012), <https://www.tjjd.texas.gov/publications/reports/2012ReentryReintegrationReport.pdf> [<https://perma.cc/857Z-PLTA>]. TJJJ effectively abolished the Texas Youth Commission and the Texas Juvenile Probation Commission and now performs the functions, duties, and responsibilities of those agencies. *Id.*

26. *In re J.D.D.*, 2008 WL 4916326, at *1.

27. *See id.* at *3 (citing his unsuccessful discharge from sex offender behavior treatment as a key reason).

28. *See Overview of the Juvenile Justice System in Texas*, TEX. JUV. JUST. DEP’T, <http://www.tjjd.texas.gov/about/overview.aspx> [<https://perma.cc/HT94-A4BR>] (last visited Aug. 10, 2017) [hereinafter *Overview*] (identifying rehabilitation as a significant consideration in the Texas juvenile justice system).

29. *See generally US: Sex Offender Laws May Do More Harm Than Good*, HUM. RTS. WATCH (Sept. 11, 2007, 8:00 PM), <https://www.hrw.org/news/2007/09/11/us-sex-offender-laws-may-do-more-harm-good> [<https://perma.cc/6X4B-N5K4>] (expressing society’s belief that “once a sex offender, always a sex offender” is erroneous as “three out of four adult offenders do not reoffend.”).

relates to non-sexual offenses. Part II of this Comment discusses the historical development of the juvenile justice system. Part III explains the life of a juvenile case, from referral to adjudication. The history and purpose of the sex offender registry are discussed in Part IV. Part V discusses Texas discretionary practices relating to juvenile justice, focusing on the order to register. Part VI analyzes the dangerous legislation permitting a juvenile to be listed as a registered sex offender, including the inevitable collateral consequences. In Part VII, the author proposes solutions and alternatives to Texas sex offender registry laws pertaining to juveniles. This comment concludes in Part VIII with a plea to the Texas Legislature to align its registration laws with the rehabilitative nature of the Texas juvenile justice system.

II. JUVENILE JUSTICE: A HISTORY OF REHABILITATIVE MEASURES

A common theme throughout the history of the juvenile justice system is the idea that children are somehow less culpable for their actions than their adult counterparts.³⁰ This idea is anything but new.³¹ During the 18th century, children as young as seven could stand trial in criminal courts and were faced with the possibility of a prison sentence—even death.³² However, children below the age of seven were “infants” and believed to be incapable of forming criminal intent.³³ “Infants” were therefore exempt from prosecution.³⁴ These 18th century beliefs prompted the idea to develop a separate and unique system for dealing with juvenile delinquents.³⁵

30. See *Roper v. Simmons*, 543 U.S. 551, 569-70 (2005) (listing three general differences between juveniles and adults: juveniles (1) lack maturity and have an underdeveloped sense of responsibility; (2) are more vulnerable and susceptible to negative influences and outside pressures than adults; and (3) “a juvenile is not as well formed as that of an adult.”).

31. See DEP’T OF JUST., OFF. OF JUV. JUST. & DELINQ. PREVENTION, *JUVENILE JUSTICE: A CENTURY OF CHANGE 2* (Dec. 1999), <https://www.ncjrs.gov/pdffiles1/ojjdp/178995.pdf> [<https://perma.cc/R445-4TPG>] [hereinafter *CENTURY*] (indicating that as early as 1825, some members of society advocated for a separate juvenile court and incarceration system).

32. *Id.*

33. See *id.* (establishing the age of reason at seven).

34. *Id.*

35. See *id.*

A. *Children Are Different*

The first juvenile court in the United States was established in Cook County, Illinois when John Augustus persuaded a judge to allow boys, ranging in age between 7 and 15, to serve a probationary sentence in his home in lieu of a conviction and jail time.³⁶ The doctrine of *parens patriae* influenced Illinois to pass the Juvenile Court Act of 1899 establishing the juvenile court, and after ten years thirty-two states had followed suit.³⁷ The doctrine of *parens patriae*³⁸ meant that States not only had the authority but a responsibility to intervene in the welfare and supervision of a child when the natural parents failed to do so.³⁹ As such, the State maintains a similar duty to intervene in the life of a delinquent child.⁴⁰ The historical and legal developments of the early 20th century shaped our contemporary rationale that children lack the ability to understand the moral consequences of their behavior.⁴¹

The desire to protect children continues to be a driving force of the juvenile justice system on a national level, influencing juvenile justice departments across state lines.⁴² Today, the juvenile justice system is premised on the idea that treatment and rehabilitation, rather than retribution, are in a child's best interest.⁴³ Moreover, the State's

36. *Id.*

37. CENTURY, *supra* note 31.

38. *Parens patriae*, BLACK'S LAW DICTIONARY (10th ed. 2014).

39. CENTURY, *supra* note 31. Sharon M. Bunzel, *The Probation Officer and the Federal Sentencing Guidelines: Strange Philosophical Bedfellows*, 104 YALE L.J. 933, 938 (1995).

40. CENTURY, *supra* note 31.

41. See *Roper v. Simmons*, 543 U.S. 551, 559 (2005) (prohibiting the death penalty on individuals who are under the age of eighteen at the time of their offense); *Graham v. Florida*, 560 U.S. 48, 81 (2010) (banning life without parole for juveniles who committed a non-homicide crime); *Miller v. Alabama*, 567 U.S. 460, 469 (2012) (declaring the mandatory application of life without parole sentences to juveniles convicted of homicide offenses without taking their youth, maturity, and individualized circumstances into consideration violated the Eighth Amendment's prohibition on cruel and unusual punishment); see also *Youth in the Justice System: An Overview*, JUVENILE LAW CENTER, <http://jlc.org/news-room/media-resources/youth-justice-system-overview> [<https://perma.cc/CBR7-UAJ2>] (last visited Aug. 10, 2017) (emphasizing the juvenile justice system acknowledges that children are still maturing into adulthood).

42. See JUVENILE LAW CENTER, *supra* note 41 (describing notable differences between the juvenile justice system and adult criminal proceedings that shield children from some of the harsher consequences associated with adult criminal activity).

43. TEX. FAM. CODE ANN. § 51.01(1) (6) (West 201); JUVENILE LAW CENTER, *supra* note 41; MACARTHUR FOUND. RES. NETWORK ON ADOLESCENT DEV. & JUV. JUST., NETWORK OVERVIEW: A CENTURY OF CHANGE IN JUVENILE JUSTICE 2 6, <http://www.adjj.org/>

obligation to protect society is advanced by a narrow focus on deterrence.⁴⁴

To understand the fundamental contrast between adults and children, consider the competency level of a twelve-year-old.⁴⁵ This child is likely unable to fully appreciate the legal and moral consequences of his or her actions, in part because of the way children think and because of their age.⁴⁶ This child is therefore more likely to respond positively to rehabilitative treatment.⁴⁷

“Juveniles” susceptibility to immature and irresponsible behavior means ‘their irresponsible conduct is not as morally reprehensible as that of an adult.’ Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character.⁴⁸

In the same vein, juveniles are more likely to yield to authority figures when making legal decisions.⁴⁹

downloads/552network_overview.pdf [https://perma.cc/C64G-VSLA] (last visited Aug. 10, 2017) [hereinafter NETWORK OVERVIEW].

44. See NETWORK OVERVIEW, *supra* note 43 (explaining how scientific research of the development of the juvenile mind shows rehabilitative services encourage the best outcome for youth offenders).

45. See *id.* (recognizing that incompetence is higher among juvenile respondents).

46. See *id.* (suggesting the combination of less life experience and behavioral immaturity as a result of age support a claim of incompetence for children akin to mental incompetency for adults).

47. See Written Testimony of Michele Deitch, J.D., M. Sc. Senior Lecturer, Lyndon B. Johnson Sch. of Public Affairs, The Univ. of Tex. Austin, to Task Force on Improving Outcomes for Juvenile Sex Offender Registry (Mar. 4, 2016) (on file with *The Scholar: St. Mary's Law Review on Race and Social Justice*) (reporting that 95% of registered juveniles have not committed a subsequent sexual offense); see also Jessica M. Salerno et al., *Give the Kid a Break— But Only If He's Straight: Retributive Motives Drive Biases Against Gay Youth in Ambiguous Punishment Contexts*, 20 PSYCHOL. PUB. POL'Y & L. 398, 399 (2014) (“Juvenile sex offender registration is particularly controversial because many critics argue that juveniles are less likely to recidivate and are more amenable to treatment, compared to adult sex offenders.”).

48. *Roper v. Simmons*, 543 U.S. 551, 570 (2005) (citations omitted).

49. See NETWORK OVERVIEW, *supra* note 43, at 2–3 (stating juveniles are more likely to accept a plea agreement and confess to police, regardless of guilt).

It is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave . . . [there is] no reason for police officers or courts to blind themselves to that commonsense reality.⁵⁰

The propensity to rehabilitate combined with the inability of a juvenile to comprehend the risks associated with choice, including long-term consequences of legal decisions, presents procedural due process issues for juveniles.⁵¹ The juvenile justice system, nation-wide, is therefore largely concerned with protecting the constitutional and fundamental rights of juveniles entangled in the system.⁵² Although each state differs procedurally, every state has a separate code specifically addressing juvenile delinquency.⁵³ By creating these specific codes and subsequent procedures specifically applicable to juveniles, states continue to acknowledge the concept that juvenile offenders are morally and cognitively less culpable for their actions.⁵⁴ This central notion surrounding juvenile justice has remained intact and further supports the need for unique treatment of juvenile offenders.⁵⁵

B. *Rehabilitation Realized*

Rehabilitation is a central goal of the juvenile justice system, creating a stark contrast with the adult criminal justice system.⁵⁶ One of the more significant differences in the adult justice system is the overarching need

50. *J.D.B. v. N.C.*, 564 U.S. 261, 264 (2011).

51. See NETWORK OVERVIEW, *supra* note 43, at 2–3 (stating the court’s ability to determine a juvenile’s competency to stand trial is fundamental to preserving their procedural due process rights).

52. See *Roper* 543 U.S. at 570 (“From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”).

53. See, e.g., COLO. REV. STAT. ANN. § 19-2-102 (West 2017); DEL. CODE ANN. tit 11, § 4123 (West 2013); MICH. COMP. LAWS ANN. § 712A.2 (West 2015); TEX. CODE CRIM. PROC. ANN. art. 62.301, 62.352 (West 2017); WASH. REV. CODE ANN. § 13.04.011 (West 2017) (dealing specifically with minors accused of criminal offenses).

54. See generally JUVENILE LAW CENTER, *supra* note 41 (suggesting juveniles require greater protection than their adult counterparts).

55. See *id.* (recognizing that States acknowledge children are not as culpable for their misconduct as adults).

56. *Juvenile VS Adults Justice*, FRONTLINE, <http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/stats/juvvsadult.html> [<https://perma.cc/AMT4-22VL>] (last visited Aug. 10, 2017); Overview, *supra* note 28; see JUVENILE LAW CENTER, *supra* note 41 (noting the focus on rehabilitation has been supported by scientific research on developmental psychology).

to punish the offender.⁵⁷ Admittedly, the juvenile justice system similarly enforces accountability for juvenile actions.⁵⁸ Despite this measure, juvenile corrections agencies still focus on developing long-term cognitive social skills⁵⁹ which is evidence of the State's parental desire to protect, nurture, and instill values in the most vulnerable children.⁶⁰ By encouraging youth to develop social skills that better equip them to become productive members of society, the State is able to serve the dual purposes of the justice system: protecting the public and holding offenders appropriately accountable for their actions.⁶¹ Having discussed the historical development of the juvenile justice system and the evolution of its foundational principles, consider the Texas juvenile justice system specifically.

III. ANATOMY OF A JUVENILE ADJUDICATION IN TEXAS

To take advantage of Texas's parental protections, a juvenile must meet certain requirements established in the State's Juvenile Justice Code.⁶² In Texas, a juvenile, or "child," is a person between the ages of ten and seventeen at the time of the alleged offense.⁶³ In juvenile court, crimes are termed as either delinquent conduct⁶⁴ or conduct in need of

57. FRONTLINE, *supra* note 56.

58. *See Overview, supra* note 28 (stating that the juvenile correction system emphasizes education on the importance of discipline, values, and work ethic).

59. *See id.* (declaring one of the goals of the juvenile justice system is guiding youth towards becoming better citizens).

60. *See* TEX. FAM. CODE ANN. § 51.01(3), (5) (West 2017) (discussing purposes of the juvenile code, including: "to provide for the care, the protection, and the wholesome moral mental, and physical development of children coming within its provisions" and "to achieve the foregoing purposes in a family environment whenever possible, separating the child's parents only when necessary for the child's welfare or in the interest of public safety and when a child is removed from the child's family, to give the child the care that should be provided by parents . . ."); *see also* CENTURY, *supra* note 31 (discussing the British doctrine of *parens patrie* which was the common law concept behind State intervention in juvenile punishment).

61. *See Workforce Development Program*, TEX. JUV. JUST. DEP'T, <https://www.tjjd.texas.gov/programs/workforce.aspx> [<https://perma.cc/KWN8-3PX2>] (last visited Nov. 19, 2017) (describing the developmental programs offered to youth, including educational and employment assistance).

62. TEX. FAM. CODE ANN. Tit. 3 (West 2017); *see Overview, supra* note 28 (defining categories of juveniles eligible for delinquent services through the State).

63. TEX. FAM. CODE ANN. § 51.02(2) (West 2017).

64. TEX. FAM. CODE ANN. § 51.03(a) (West 2017). Delinquent conduct is conduct that would result in confinement if committed by an adult. *Overview, supra* note 28.

supervision (CINS).⁶⁵ Only delinquent conduct may result in loss of liberty, but a juvenile who commits either type of crime may be referred to a juvenile court for disposition.⁶⁶

A. *Referral and Adjudication*

Every county in Texas has a juvenile court that deals specifically with juvenile offenders.⁶⁷ Juvenile courts provide services to youth and work in conjunction with the district or county attorneys who prosecute these cases.⁶⁸ Probation departments serviced by individual counties supervise court-ordered services and act as a liaison to the juvenile court judge.⁶⁹ Each county is statutorily required to have a juvenile board which governs the operational aspect of the county's juvenile justice system.⁷⁰

The Texas Juvenile Justice Department (TJJD), created by the Texas Legislature, provides additional support to each county by establishing state-wide policies and standards, ancillary funding, professional training, and placement for habitual offenders.⁷¹ TJJD manages and operates secure facilities and halfway houses for juveniles who are unable to rehabilitate under less restrictive county supervision.⁷² If a court adjudicates a juvenile for delinquent conduct, the juvenile faces a number of disposition outcomes: probation; indeterminate sentence and TJJD placement; or determinate sentence and TJJD placement.⁷³ While an

65. TEX. FAM. CODE ANN. §§ 51.03(a), (b) (West 2017). Conduct in need of supervision includes conduct that, if committed by an adult, would result only in a fine. *Overview, supra* note 28.

66. *Overview, supra* note 28.

67. *See* TEX. FAM. CODE ANN. §§ 51.04(b), (c) (West 2017) (instructing each county to designate one or more juvenile courts).

68. *Overview, supra* note 28.

69. *Id.*

70. *Id.* The governing functions of the juvenile board include designating judges, appointing chief probation officers, and setting the policy and budget for juvenile probation departments. *Id.*

71. *Id.* TJJD replaced both the Texas Youth Commission (TYC), which was responsible for supervising youth committed to state confinement, and the Texas Juvenile Probation Commission (TJPC), which provided probation services to children. TJJD is now responsible for carrying out the functions of both former agencies through a uniform system. TEX. HUM. RES. CODE ANN. § 201.002 (2011); *see also* YOUTH REENTRY AND REINTEGRATION, *supra* note 25.

72. *Overview, supra* note 28.

73. *Id.*; *see How Offenders Move Through TJJD*, TEX. JUV. JUST. DEP'T, http://www.tjjd.texas.gov/about/how_movethru.aspx [<https://perma.cc/73ZY-THTG>] (last visited

adjudication for delinquent conduct or a CINS offense is akin to an adult conviction,⁷⁴ it is distinct from a “guilty” judgment and is excluded from local, state, and employment-related criminal history checks.⁷⁵

With the exception of adult certification, placement in a TJJD facility is the most severe punishment that an offender faces in the juvenile system.⁷⁶ High-security facilities surrounded by fencing incarcerate the most serious offenders;⁷⁷ medium- to low-security facilities house less violent offenders and do not include fences.⁷⁸ The level of security chosen for each offender is contingent upon their individualized needs and characteristics.⁷⁹ While TJJD may appear to mirror the adult criminal justice system, there are important distinctions.⁸⁰

The decision to place a juvenile in a TJJD facility, while largely influenced by the prosecutor, is ultimately determined by the juvenile court judge.⁸¹ Once a juvenile is sentenced to TJJD they undergo an assessment prior to placement.⁸² The assessment determines the juvenile’s “[m]edical, emotional, educational, and psychological needs” in order to create a treatment plan that is best-suited to the specific juvenile.⁸³

Most TJJD sentences are indeterminate, allowing TJJD to determine the minimum sentence a juvenile must serve before the juvenile is eligible

Aug. 10, 2017) (listing several types of adjudications a juvenile offender may receive from the juvenile court).

74. *Overview*, *supra* note 28.

75. *See* FRONTLINE, *supra* note 56 (distinguishing between “delinquent” and “guilty”); *see also Overview*, *supra* note 28 (explaining the sealing of juvenile records is intended to give the youth “a second chance at life without the stigma of having been in trouble with the law.”).

76. *See How Offenders Move Through TJJD*, *supra* note 73 (stating that certification allows youth to be considered adults in the criminal justice process thereby excluding them from the juvenile justice system); *Overview*, *supra* note 28 (indicating the county prosecutor can request a youth be certified as an adult).

77. *How Offenders Move Through TJJD*, *supra* note 73.

78. *Id.*

79. *Id.*

80. *Overview*, *supra* note 28; *see* JUVENILE LAW CENTER, *supra* note 41 (distinguishing the juvenile justice system, generally, which focuses on protecting children from their delinquent behavior).

81. *How Offenders Move Through TJJD*, *supra* note 73.

82. *Id.*

83. *See id.* (indicating the assessment is periodically updated to ensure the treatment plan is appropriate for each stage in a juvenile’s life).

for parole.⁸⁴ The determination is based on the juvenile's offense and risk of future criminality.⁸⁵ Completing the minimum length of a sentence, usually between nine and twenty-four months, does not guarantee release.⁸⁶ Once a juvenile is sent to TJJD, he or she could remain in custody until they are nineteen years old.⁸⁷ In contrast, a determinate sentence is set by the court or jury and may be as long as forty years.⁸⁸ If the juvenile turns nineteen before the determinate sentence is completed, he or she is transferred to the Texas Department of Criminal Justice to complete the remainder of their time within the adult criminal justice system.⁸⁹ Importantly, however, "[i]f a determinate sentenced youth is successful in TJJD treatment, he or she can often serve the balance of his or her court-mandated sentence on adult parole rather than in adult prison."⁹⁰ In other words, Texas—the ever protective parent—provides both indeterminate and determinate sentenced youth multiple avenues to avoid ever entering the adult criminal justice system.⁹¹

Overall, TJJD's goal is to reinforce the rehabilitative purpose of the juvenile justice system.⁹² While each youth's journey through the juvenile system is individualized based on the current offense, offense history, and other personal factors, the system generally follows a progressive sanctions and interventions model.⁹³ The progressive sanctions model addresses delinquency with minimum intervention, only increasing the seriousness of the interventions and sanctions as is necessary to target recurring delinquency.⁹⁴ Indeed, TJJD sentences are intended to serve as a final attempt to prevent an adult criminal

84. *Id.*

85. *Id.*

86. *Id.*

87. *How Offenders Move Through TJJD*, *supra* note 73

88. *Id.*

89. *Id.*

90. *Overview*, *supra* note 28.

91. *See How Offenders Move Through TJJD*, *supra* note 73 ("Depending on progress in treatment, they may be able to serve the TDCJ portion of their sentences (if any) on adult parole rather than in prison. Only a judge, not TJJD, can send a youth to prison.").

92. *Overview*, *supra* note 28 ("While public safety and holding juveniles accountable for their actions are certainly considerations, the juvenile correctional system places an emphasis on rehabilitation."); *FRONTLINE*, *supra* note 56.

93. *Overview*, *supra* note 28.

94. *Id.*

conviction.⁹⁵ These efforts are further evidenced by TJJD's policy to teach and nurture rather than punish.⁹⁶ In fact, even after release from TJJD and during subsequent parole, educational liaisons are available to assist youth with college and financial aid applications.⁹⁷

B. *Record of Referral*

Texas provides further protection to juveniles by sealing their juvenile record in certain circumstances.⁹⁸ Sealing a juvenile's record limits public access to that individual's involvement with the juvenile justice system.⁹⁹ A juvenile record consists of any arrest or referral to a juvenile probation department for CINS offenses; Class A, B, and C misdemeanors; and felony offenses.¹⁰⁰ Sealing a record is beneficial because the record is treated as though it never existed and a juvenile may legally deny any type of involvement with the juvenile justice agency.¹⁰¹ It is important to note that certain records are exempt from sealing, including records relating to street gangs, sex offender registration, and records maintained by TJJD for "statistical and research purposes."¹⁰² Although this information is subject to change, there are currently two avenues to sealing a juvenile record: without application and with application.¹⁰³

In general, a person referred to a juvenile probation department for delinquent conduct, including all misdemeanors and un-adjudicated felonies, is eligible to have their record sealed without application.¹⁰⁴

95. *Id.*

96. *See How Offenders Move Through TJJD, supra* note 73 ("Even when it is necessary to incarcerate youth, the setting is not punitive but rather it is protective and designed to educate youth about discipline, values, and work ethics and thus guide them toward becoming productive citizens.").

97. *Id.*

98. *See* TEX. FAM. CODE. ANN. § 58.253 (West 2017) (establishing the requirements for sealing records for delinquent conduct); *Id.* § 58.255 (establishing the requirements for sealing records of conduct in need of supervision).

99. TEX. FAM. CODE. ANN. § 58.261 (West 2017) (discussing the effect of sealing of records).

100. *See id.* § 58.251 (defining a record as "any documentation relating to a juvenile matter, including information contained in that documentation.").

101. *Id.* § 58.261.

102. *Id.* § 58.252.

103. *Id.* §§ 58.253, .255, .256.

104. TEX. FAM. CODE. ANN. § 58.253 (West 2017).

Sealing without application requires the following: the person is at least nineteen years of age; has no pending delinquent conduct matters; was never certified as an adult; and has no pending adult charges or convictions of a jailable misdemeanor or higher.¹⁰⁵ Persons referred to a juvenile probation department for a CINS offense are also entitled to seal their records, provided the following is met: the person is at least eighteen years of age; was never referred to a juvenile court for delinquent conduct; has no adult felony conviction; and has no pending adult felony or jailable misdemeanor charges.¹⁰⁶

Even if a person is not entitled to seal his or her records, he or she may nevertheless apply to the juvenile court for such sealing.¹⁰⁷ An application must show the person is at least eighteen years of age; has no pending delinquent conduct, adult felony, or adult jailable misdemeanor charges; no felony convictions; and was never certified as an adult.¹⁰⁸ If the juvenile is younger than eighteen, he or she may still qualify upon proof that at least two years have passed since each referred matter has been discharged.¹⁰⁹ The court may hold a hearing to determine whether sealing is appropriate, but may not deny an application without holding a hearing.¹¹⁰ However, if the person received a determinate sentence for certain offenses,¹¹¹ is currently required to register as a sex offender, or was committed to TJJD or Travis County's commitment program and has not been discharged, the court may not order the sealing.¹¹²

Thus, while there are narrow exceptions, the State of Texas remains dedicated to providing various interventions during and subsequent to the adjudicatory process.¹¹³ Indeed, through its juvenile justice system, Texas reinforces the concept that children are less culpable for their acts

105. *Id.* § 58.253.

106. *Id.* § 58.255.

107. *Id.* § 58.256(a).

108. *Id.* § 58.256(e).

109. *Id.* § 58.256(e)(1).

110. TEX. FAM. CODE ANN. § 58.256(e) (West 2017).

111. *See id.* § 58.256(d) (excluding determinate sentences for delinquent conduct violating Section 53.045 of the Texas Penal Code and habitual felony conduct as described in Section 51.031 of the Texas Family Code).

112. *Id.* § 58.256(d).

113. *Overview, supra* note 28 (discussing the various services TJJD provides to juveniles at each stage of a case).

than adults and more likely to mature into productive members of society.¹¹⁴

IV. JUVENILES AND THE SEX OFFENDER REGISTRY

A juvenile adjudication is generally not made available for public examination, but the same is not true of a juvenile adjudication for a sex offense.¹¹⁵ An adjudication for a sex offense carries with it retributive characteristics inherent in the federal statute that requires registration.¹¹⁶ This has not always been the case.¹¹⁷

A. *National Sex Offender Registry*

Prior to the enactment and codification of the Adam Walsh Child Protection and Safety Act of 2006,¹¹⁸ there was no federal requirement for a juvenile to register as a sex offender following adjudication of a sexual offense.¹¹⁹ All fifty states operated under the provisions set forth by the Jacob Wetterling Act of 1994,¹²⁰ which required each state to establish a sex offender registry as a prerequisite to obtaining federal funds. The Wetterling Act mandated that a person convicted of a *criminal offense against a victim who is a minor* enroll in the State law

114. *Overview, supra* note 28; *see Roper v. Simmons*, 543 U.S. 551, 570 (2005) (“From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor’s character deficiencies will be reformed.”).

115. TEX. FAM. CODE ANN. § 58.252(2) (West 2017).

116. *See id.* § 58.252 (West 2017) (exempting sex offenses from automatic restriction of access); *see also Juvenile Offenders and SORNA Registration*, OFF. JUST. PROGRAMS, https://ojp.gov/smart/juvenile_offenders.htm#ednref1 [<https://perma.cc/2E6M-U55S>] (last visited Aug. 10, 2017) (discussing federal minimum guidelines requiring juvenile sex offender registration upon adjudication of certain offenses).

117. *See* Leslie A. Hagen et al., *Consultation: Adam Walsh Child Protection & Safety Act of 2016*, U.S. DEPT. OF JUST., https://www.justice.gov/archive/tribal/docs/fv_tjs/session_3/session3_presentations/Adam_Walsh.pdf [<https://perma.cc/T5D9-XPM3>] (last visited Aug. 10, 2017) (discussing the law prior to 1994, when only a handful of states required offenders convicted of sex crimes to register with their local law enforcement agency).

118. 42 U.S.C. § 16901 (2006).

119. Lori McPherson, *Practitioner’s Guide to the Adam Walsh Act*, 20 NAT’L CTR. FOR PROSECUTION OF CHILD ABUSE UPDATE (AM. PROSECUTORS RESEARCH INST., ALEXANDRIA, VA.), no. 9 & 10, 2007, at 2-3, http://www.ndaa.org/npcpa_update_newsletter.html [<https://perma.cc/K7Y2-TXWH>].

120. Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. § 14071 (1994) (repealed 2006).

enforcement agency's registration program.¹²¹ The Wetterling Act did not require registry of juvenile adjudications—a stark contrast with provisions in the Adam Walsh Act.¹²²

Jacob Wetterling was an eleven year-old boy who disappeared in Minnesota in 1989 after an encounter with a previously unidentified masked man.¹²³ His body was only recently found.¹²⁴ Investigators learned that convicted sex offenders lived in halfway houses near Jacob's home, but the presence of sex offenders had been unknown to local law enforcement.¹²⁵ The federal government responded by enacting the Jacob Wetterling Act, effectively establishing a uniform registry.¹²⁶ The Wetterling Act required a person convicted of a criminal offense against a victim who is a minor to provide law enforcement agencies a current address that was only made public under the State's discretion.¹²⁷ Later, in 1994, a seven-year-old girl in New Jersey was sexually assaulted and murdered by a neighbor who previously was convicted of two sexual assaults on children,¹²⁸ prompting the "Megan's Law" amendment to the Wetterling Act.¹²⁹ Megan's Law eliminated the State's discretion in releasing information related to prior sexual offenses in the Wetterling Act, and instead, mandated the release of such information when necessary to protect public safety.¹³⁰ Additionally, Megan's Law permitted disclosure of any registry information for any purpose

121. *Id.* § 14071(a)(1)(A); McPherson, *supra* note 119.

122. *See* McPherson, *supra* note 119, at 2 ("Unlike the requirements of the Jacob Wetterling Act, SORNA does require that certain juveniles register as sex offenders.").

123. *Megan's Law & the Adam Walsh Child Protection Act*, PARENTS FOR MEGAN'S L., <https://www.parentsformeganslaw.org/public/meganFederal.html> [<https://perma.cc/GX3E-8KXD>] (last visited Aug. 10, 2017); Erik Ortiz, *Man Admits to Abducting, Killing Jacob Wetterling, Missing Minnesota Boy in 1989*, NBCNEWS (Sept. 7, 2016) <https://www.nbcnews.com/news/us-news/man-admits-abducting-killing-jacob-wetterling-missing-minnesota-boy-1989-n643506> [<https://perma.cc/4E6V-MJ5C>] (reporting Danny Heinrich's confession to abducting, molesting, and killing Jacob Wetterling).

124. PARENTS FOR MEGAN'S L., *supra* note 123; Ortiz, *supra* note 123.

125. PARENTS FOR MEGAN'S L., *supra* note 123.

126. 42 U.S.C. § 14071 (1994) (repealed 2006); PARENTS FOR MEGAN'S L., *supra* note 123

127. *Id.*; PARENTS FOR MEGAN'S L., *supra* note 123.

128. PARENTS FOR MEGAN'S L., *supra* note 123.

129. "Megan's Law", Pub. L. No. 104145, 110 Stat 1345 (1996) (amending 42 U.S.C. § 14071) (repealed 2006).

130. Susan Deschler Oakes, Comment, *Megan's Law: Analysis on Whether it is Constitutional to Notify the Public of Sex Offenders Via the Internet*, 17 J. MARSHALL J. COMPUTER & INFO. L. 1133, 113940 (1999).

supported by state law.¹³¹ Despite the expanded and more robust reporting and notification provisions in Megan's Law, juveniles remained a protected class of offenders.¹³²

The Adam Walsh Act, passed in 2006, effectively repealed the Wetterling Act and created a national registry system to track sex offenders crossing state borders.¹³³ The Act's stated purpose was to "protect the public from sex offenders and offenders against children."¹³⁴ Title I of the Act, the Sex Offender Registration and Notification Act (SORNA), incorporated juvenile delinquent adjudications for offenses comparable to (or more severe than) aggravated sexual abuse into the definition of "conviction."¹³⁵ Because of this inclusion, juveniles adjudicated of such offenses are required to register.¹³⁶ However, this requirement applies only to a juvenile who causes another person to engage in a sexual act "by using force against that person" or by rendering "another person unconscious and thereby engages in a sexual act with that other person" and the juvenile is at least fourteen years of age at the time of the offense.¹³⁷ SORNA defines "sexual act" as "any degree of genital or anal penetration, and any oral-genital or oral-anal contact."¹³⁸ Compliance with SORNA entitles states to federal aid for public safety programs, but non-compliance threatens a ten percent reduction in such federal assistance.¹³⁹ Further, SORNA specifically provides that the standards included within the Act are

131. *Id.*; See PARENTS FOR MEGAN'S L., *supra* note 123 (emphasizing the distinction between making information available and active notification to the community where a sex offender will be living).

132. PARENTS FOR MEGAN'S L., *supra* note 123.

133. 34 U.S.C. § 20901 (2017); Maggie Clark, *States Still Resisting National Sex Offender Law Requirements*, STATEHOUSE FILE.COM (Oct. 2, 2012), <http://thestatehousefile.com/states-still-resisting-national-sex-offender-law-requirements/7292> [<https://perma.cc/6TH7-2VME>].

134. 34 U.S.C. § 20901 (2017).

135. *Id.* § 20911(8).

136. *Id.* § 20911(8); *Juvenile Offenders and SORNA Registration*, *supra* note 116; McPherson, *supra* note 119, at 2-3.

137. 34 U.S.C. § 20911(8) (2012); 18 U.S.C. § 2241 (2007); *Juvenile Offenders and SORNA Registration*, *supra* note 116.

138. 18 U.S.C. § 2246(2) (2012); *Juvenile Offenders and SORNA Registration*, *supra* note 116.

139. 34 U.S.C. § 20927 (2017); U.S. DEP'T OF JUST., THE NATIONAL GUIDELINES FOR SEX OFFENDER REGISTRATION AND NOTIFICATION 6 (2007), https://www.justice.gov/archive/tribal/docs/fv_tjs/session_3/session3_presentations/Sex_Offender_Guidelines.pdf [<https://perma.cc/5DS3-PJ9V>] [hereinafter NATIONAL GUIDELINES].

sufficient for state compliance.¹⁴⁰ In other words, SORNA is a minimum standard guideline that a state may exceed, but may not undermine.¹⁴¹

B. *Texas Sex Offender Registry*

Texas is among a number of states that, instead of simply complying with SORNA's minimum guidelines,¹⁴² have elected to broaden the class of juvenile delinquency adjudications for purposes of a "conviction," thereby allowing for a larger class of juvenile registrants.¹⁴³ In Texas, a person with a reportable conviction or adjudication must comply with the Texas Sex Offender Registration Program, including law enforcement verification requirements.¹⁴⁴ Further, the duty to register is not affected by any pendency of an appeal of a conviction or juvenile adjudication.¹⁴⁵

In 1991, the 72nd legislative session created the Texas Sex Offender Registration Program and enumerated a list of "reportable convictions and adjudications," (reportable offenses) including indecency with a child, sexual assault, aggravated sexual assault, incest, and four violations of indecent exposure.¹⁴⁶ The 73rd Legislature included "deferred adjudication" to the definition of a reportable adjudication, and added

140. 34 U.S.C. § 20927(b) (2012); see *Summary of Final National Guidelines for Sex Offender Registration and Notification for Implementation of SORNA (Title I of the Adam Walsh Child Protection and Safety Act of 2006)*, NCSL.ORG, <http://www.ncsl.org/research/civil-and-criminal-justice/summary-of-final-national-guidelines-sorna.aspx> [<https://perma.cc/A3SA-A999>] (last visited Aug. 10, 2017) [hereinafter *Summary of Guidelines*] (reporting "substantial implementation" is met if a State carries out the requirements of SORNA).

141. *Summary of Guidelines*, *supra* note 140.

142. See *Juvenile Offenders and SORNA Registration*, *supra* note 116, at 27 (identifying Texas as one of several jurisdictions that have not met minimum SORNA requirements). Texas has been identified as being out of compliance in the following categories: tracking and penalizing absconders; community notification; and offender appearance and verification. *Id.*

143. See TEX. CODE CRIM. PROC. ANN. art. 62.001(5) (West 2017) (listing offenses that constitute a "reportable conviction or adjudication" for purposes of registry laws). Texas was among the few states that permitted juveniles to enter the registry prior to the 1994 Wetterling Act. TASK FORCE ON IMPROVING OUTCOMES FOR JUV. ADJUDICATED OF SEXUAL OFFENSES, TEX. JUV. JUST. DEP'T, H.B. 1144 REPORT: STRATEGIES FOR IMPROVING OUTCOMES FOR JUVENILES ADJUDICATED OF SEXUAL OFFENSES IN TEXAS at 7 (Dec. 1, 2016), <http://www.ncsby.org/sites/default/files/IJSXO-HB1144-Report%20%25281%2529%20%20Texas%202016%20report.pdf> [<https://perma.cc/8CHU-67FB>] [hereinafter TASK FORCE].

144. TEX. CODE CRIM. PROC. ANN. art. 62.051 (West 2017).

145. *Id.* art. 62.001(5).

146. Act of June 15, 1991, 72nd Leg., R.S., ch. 572, 1991 Tex. Sess. Law Serv. 2029 (West).

sexual performance by a child and possession or promotion of child pornography to the definition of reportable offenses.¹⁴⁷ The 74th Legislature added aggravated kidnapping “with intent to violate or abuse the victim sexually” and burglary committed with intent to commit indecency with a child, sexual assault, aggravated sexual assault, incest, or aggravated kidnapping.¹⁴⁸ However, in 1999, the 76th Legislature added a new subsection of reportable offenses, applicable to juveniles and adults, that had no sexual component whatsoever.¹⁴⁹ The list includes unlawful restraint, kidnapping, aggravated kidnapping, and attempt, conspiracy, or solicitation to commit such offenses.¹⁵⁰ The only prerequisite prescribed in this list of non-sexual offenses is that the victim was younger than seventeen at the time of the offense.¹⁵¹ As a result, Texas has gone further than simply expanding the class of juvenile adjudications of sexual offenses beyond the minimum requirements of SORNA.¹⁵² The Texas Legislature statutorily allows sex offender registration for offenses that have no sexual component of any kind.¹⁵³

V. DISCRETIONARY REGISTRATION IN TEXAS

Texas affords juvenile judges wide discretion when considering punishment for an adjudication of delinquent conduct.¹⁵⁴ But Texas, once again, takes its discretionary practices one step further by providing additional, legislatively approved, discretion to order a juvenile with a reportable adjudication to register as a sex offender.¹⁵⁵ A reportable adjudication is any offense listed in Article 62.001 of the Code of Criminal Procedure, which includes but is not limited to sexual

147. Act of June 18, 1993, 73rd Leg., R.S., ch. 866, § 1, sec. 62.001(5), 1993 Tex. Gen. Laws 299.

148. Act of May 22, 1995, 74th Leg., R.S., ch. 258, 1995 Tex. Sess. Law Serv. 2197 (West).

149. See Act of June 18, 1999, 76th Leg., R.S., ch. 1193, 1999 Tex. Sess. Law 4178 (West) (requiring registration of certain non-sexual offenses under the sex offender registration program).

150. Act of June 18, 1999, 76th Leg., R.S., ch. 1193, 1999 Tex. Sess. Law 4178 (West).

151. *Id.*

152. See *Summary of Guidelines*, *supra* note 140 (“SORNA is a ‘floor’ not a ‘ceiling’ . . .”).

153. See TEX. CODE CRIM. PROC. ANN. art. 62.001(5) (West 2015) (listing all offenses that require sex offender registration).

154. See *id.* art. 62.351(a) (describing the procedure a respondent must go through to move the court to consider whether registration will be imposed).

155. *Id.* art. 62.351(a).

offenses.¹⁵⁶ Under Article 62.351, the court, on motion of the respondent, must conduct a hearing to determine whether the juvenile should be required to register.¹⁵⁷ The court addresses several factors in making a determination on this motion.¹⁵⁸ These factors include the public's safety and interests; exhibits and witness testimony; counsel arguments; social history reports; and psychological examinations.¹⁵⁹ The juvenile must establish by a preponderance of the evidence that registration would cause significant personal harm that cannot be justified by an increase in public safety.¹⁶⁰ If the court determines the juvenile met this burden, the juvenile will be exempted from registration.¹⁶¹ However, if the juvenile does not meet this burden, the court may order the child to: (1) register as a sex offender; (2) privately register as a sex offender;¹⁶² or (3) defer the decision on registration until the child completes sex offender treatment.¹⁶³ The juvenile is not required to register during the deferral period; however, the court retains discretion to require registration during treatment.¹⁶⁴ Absent a motion filed by the State, the juvenile is exempted from registration upon successful discharge from treatment.¹⁶⁵

Article 62.355 provides that the prosecuting attorney may waive the State's right to a registration hearing signaling that registration is not required.¹⁶⁶ Such a waiver can be granted as part of a plea bargain; if this is the case, the court shall enter an order exempting the juvenile from

156. *Id.* art. 62.001(5).

157. *Id.* art. 62.351(a).

158. *Id.* art. 62.351(b).

159. TEX. CODE CRIM. PROC. ANN. art. 62.351(a) (b) (West 2017).

160. *Id.* art. 62.351(b); *see* TEX. CODE CRIM. PROC. ANN. art. 62.352(a) (West 2017) (noting that registration is an "anticipated substantial harm to the respondent and the respondent's family . . .").

161. TEX. CODE CRIM. PROC. ANN. art. 62.352(a) (West 2017).

162. Private registration entails restricting public access to registration information but permits access to the same information for "law enforcement and criminal justice agencies, the Council on Sex Offender Treatment, and public or private institutions of higher education." *Id.* art. 62.352(b)(2). Information pertaining to an order under this subsection may not be published to the Internet or the public. *Id.* art. 62.352(d)(2).

163. TEX. CODE CRIM. PROC. ANN. art. 62.352(b) (West 2017).

164. *Id.* art. 62.352(c).

165. *Id.*

166. *Id.* art. 62.355

registration.¹⁶⁷ Alternatively the court may decide a hearing is necessary despite the plea agreement, providing the juvenile a number of procedural options.¹⁶⁸ The juvenile may withdraw his or her plea, or affirm the agreement and continue to the registration hearing.¹⁶⁹

Even if a court determines registration is appropriate, it has even more discretion to order “full registration” or “non-public registration”; the requirements of each are distinct.¹⁷⁰ “Full registration” mandates registration by a child with a reportable adjudication on the sex offender registry and verification with local law enforcement.¹⁷¹ If the youth was sent to a secure residential placement to complete sex offender treatment as a condition of probation, TJJD must take certain precautions prior to release.¹⁷² TJJD must determine the risk imposed on the community by the child’s reintegration.¹⁷³ Additionally TJJD must ensure pre-release notifications are thoroughly discussed with and signed by the child; registration forms are completed and sent to the Department of Public Safety (DPS) and to the appropriate law enforcement agency in the county where the child will reside; and ensure fingerprints are attached to a current photograph of the child and sent to DPS.¹⁷⁴

“Non-public registration” also mandates registration for children with reportable adjudications; the difference with “full registration” is the child’s registration information is not accessible to the public.¹⁷⁵ Where the child has been sent to a secure residential placement facility to complete treatment as a condition of probation, TJJD must comply with the registration requirements outlined above for “full registration” youth.¹⁷⁶ However, the registration includes a notification to DPS outlining the child’s non-public registration status, including the court

167. *Id.*

168. *Id.*

169. TEX. CODE CRIM. PROC. ANN. art. 62.355(c) (West 2017).

170. GAP No. 380.8785, *supra* note 18, at (c) (defining “full registration” and “non-public registration”).

171. *Id.* at (c)(2), (c).

172. *Id.* at (c) (i).

173. TEX. JUV. JUST. DEP’T, GAP No. 380.8787, GENERAL ADMINISTRATIVE POLICY MANUAL, <http://www.tjjd.texas.gov/policies/gap/380/87/gap3808787.pdf> [<https://perma.cc/NTM3-GU88>] (last visited Aug. 13, 2017).

174. *Id.* at (c).

175. GAP No. 380.8785, *supra* note 18, at (c)(3).

176. *Id.* at (c)(6), (e).

order granting the non-public registration.¹⁷⁷ The notification is also sent to the appropriate local law enforcement authority where the child is expected to reside.¹⁷⁸

On its face, discretionary registration practices in Texas are in direct conflict with the rehabilitative goal driving the Texas Juvenile Justice Department.¹⁷⁹ Texas's juvenile system takes pride in the various efforts it expends toward "transforming young lives."¹⁸⁰ Two of TJJD's core values state: "[w]e do the right thing, in all things, with all people" and "[w]e commit to a culture that protects youth."¹⁸¹ The Department's vision for an effective juvenile justice system is one that "[a]dvances public safety through rehabilitation" and "[c]quitably affords youth access to service matching their needs to enhance opportunities for a satisfying and productive life."¹⁸² But these visionary statements are nothing more than mere words lacking an adequate process that adopts practices to advance rehabilitative measures.

VI. THE PROBLEM WITH REQUIRING REGISTRATION FOR NON-SEXUAL OFFENSES—AN ANALYSIS OF DANGEROUS LEGISLATION

As it relates to Article 62 non-sexual offenses, Texas's discretionary practices create inconsistencies between juveniles ordered to register as sex offenders and juveniles exempted from registration.¹⁸³ For example, some juveniles on the registry, like J.D.D., have never actually committed an Article 62 sexual offense—at least not by society's understanding of what the term "sexual" means.¹⁸⁴ And yet, J.D.D. was ordered to register as a sex offender.¹⁸⁵ Meanwhile, other juveniles adjudicated for an Article 62 sexual offense that would fit within society's definition of

177. *Id.* at (f).

178. *Id.* at (f)(2).

179. See *About TJJD*, TEX. JUV. JUST. DEP'T, https://www.tjjd.texas.gov/aboutus/agency_mission.aspx [<https://perma.cc/B411Z-VCPL>] (last visited Aug. 13, 2017) (stating that one of TJJD's main purposes is to rehabilitate juveniles).

180. *Id.*

181. *Id.*

182. *Id.*

183. TEX. CODE CRIM. PROC. ANN. art. 62.351–62.352 (West 2017).

184. *In re J.D.D.*, Nos. 05-07-01252-CV, 05-07-1253-CV, 2008 WL 4916326, at *1 (Tex. App. Nov. 18, 2008) (unpublished).

185. *In re J.D.D.*, 2008 WL 4916326, at *1.

“sexual” are exempt from registration.¹⁸⁶ Further, Texas places great emphasis on protecting certain groups of juveniles who have unequivocally committed Article 62 sexual offenses by codifying exemptions to registration.¹⁸⁷

A. *Exempting Non-Sexual Offenses Complements the Legislature’s Intent*

The “Romeo and Juliet” law exempts an otherwise reportable adjudication if it occurs consensually between a teenager who is at least fifteen years old and a young adult not older than nineteen years of age at the time of the offense.¹⁸⁸ Further, it is an affirmative defense to prosecution if the actor was not more than three years older than the victim at the time of the offense.¹⁸⁹ In other words, this law would unambiguously protect from prosecution a seventeen year-old who engages in quasi-consensual activity with a fourteen-year-old. Notably, however, this law does not preclude an adjudication for the principal offense.¹⁹⁰ “Romeo and Juliet” laws emphasize the difference between

186. See TEX. CODE CRIM. PROC. ANN. art. 62.351–62.352 (West 2017) (listing exemptions from registration); see also Christy Dunn, *Juvenile Sex Offender Registration in Texas*, BHWLAWFIRM.COM, <https://www.bhwlawfirm.com/juvenile-sex-offender-registration> [<https://perma.cc/2BDL-T2AF>] (last visited Aug. 13, 2017) (explaining that Article 62.351 provides courts the authority to hold a hearing to determine exemption from registration).

187. See TEX. CODE CRIM. PROC. ANN. art. 62.352 (West 2017) (providing the court with the authority to exempt a juvenile when (1) “the protection of the public would not be increased by registration”; or (2) “any potential increase in protection of the public resulting from registration is clearly outweighed by the anticipated substantial harm to the respondent . . .”); see also Carissa Byrne Hessick & Judith M. Stinson, *Juveniles, Sex Offenses, and the Scope of Substantive Law*, 46 TEX. TECH. L. REV. 5, 8 (2013) (arguing that in light of the “so called Romeo-and-Juliet exceptions to statutory rape laws,” there is room for more understanding of the consequences for juveniles in Texas’s sex offender laws).

188. TEX. PENAL CODE ANN. § 22.011(c)(2) (WEST 2017).

189. See *id.* (providing an affirmative defense against prosecution of sexual assault if the offender is not more than three years older than the victim; the offender was not required to register as a sex offender; and the victim was at least fourteen years of age); *id.* § 21.11(b) (providing an affirmative defense to prosecution of indecency with a child if there is not more than three years of age between offender and victim; the victim is the opposite sex; and the offender was not required to register as a sex offender at the time of the offense). Convictions under § 21.11 and § 22.011 are eligible for exemption from registration under § 62.301(c). TEX. CODE CRIM. PROC. ANN. art. 62.301(c) (West 2013); Deitch, *supra* note 47.

190. *Romeo and Juliet Law in Texas*, SHAPIRO L. FIRM, <http://www.theshapirolawfirm.com/News-and-Resources/Articles/Romeo-and-Juliet-Law-in-Texas.shtml> [<https://perma.cc/ASA9-QYWII>] (last visited Aug. 13, 2017).

a sexual predator and an immature teenager.¹⁹¹ One typical “Romeo and Juliet” scenario contemplates a quasi-consensual sexual relationship between teenagers under the age of consent, but non-consensual in the eyes of the law.¹⁹² Many “Romeo and Juliet” advocates argue that without these protective measures, many innocent teens would be erroneously labeled as sexual predators.¹⁹³ The premise for this argument is that teenagers are foolish or love struck, but certainly not deviant sexual predators who belong on a national sex offender registry.¹⁹⁴ Moreover, they should not suffer the substantial collateral consequences that come with being on the registry.¹⁹⁵ While consent is a key factor in judicial decision-making, the presence of any statutorily allowed judicial discretion at all signifies the legislature’s intent to separate true sexual predators from experimenting or curious children.¹⁹⁶

Children under the age of ten also benefit from Texas’s protective legislation.¹⁹⁷ Texas offers many programs for children engaging in

191. See Dunn, *supra* note 186 (acknowledging that juveniles who commit sexual offenses are not pedophiles).

192. TEX. PENAL CODE ANN. §§ 22.011(a)(2), (c)(1) (West 2017) (defining the age of consent at seventeen); *Romeo and Juliet Law in Texas*, *supra* note 190.

193. See Dunn, *supra* note 186 (explaining why exemptions are an appropriate approach to juvenile sex offender registry).

194. See *id.* (stating juveniles committing sexual offenses are likely to be experimenting or impulsive).

195. See Hessick & Stinson, *supra* note 187, at 19–20 (discussing the substantive constitutional implications that sex offender registration poses to juveniles); Victoria Simpson Beck & Stephanie Boys, *Romeo & Juliet: Star-Crossed Lovers or Sex Offenders?* 24 CRIM. JUST. POL’Y REV. 655, 669 (2013) (describing public opposition to requiring teens engaged in consensual sexual relationships to register as sex offenders which, if required, would result in the “slaying of potential good in the life of a young person”); see also *Raised on the Registry: The Irreparable Harm of Placing Children on Sex Offender Registries in the US*, HUM. RTS. WATCH (May 1, 2013), <https://www.hrw.org/report/2013/05/01/raised-registry/irreparable-harm-placing-children-sex-offender-registries-us> [<https://perma.cc/7F4X-X455>] [hereinafter *Registry*] (“Suicide [among children] placed on sex offender registries] is a possibility . . . even predictable.”).

196. See Dunn, *supra* note 186 (emphasizing the importance of judicial discretion in exempting some juveniles from the sex registry).

197. TEX. FAM. CODE ANN. § 264.301 (West 1996); TEX. DEP’T FAM. AND PROT. SERV., ET. AL., AGENCY COORDINATION FOR YOUTH PREVENTION & INTERVENTION SERVICES 819 (2015), https://www.tjfd.texas.gov/services/prevention/docs/Report_Interagency_Coordination_Youth_Prevention_Intervention_Services.pdf [<https://perma.cc/4XFV-EQPQ>] [hereinafter AGENCY COORDINATION]; *Prevention and Early Intervention (PEI) Programs*, TEX. DEP’T FAM. & PROT. SERV., https://www.dfps.state.tx.us/prevention_and_early_intervention/about_prevention_and_early_intervention/programs.asp [<https://perma.cc/58AB-4V8J>] (last visited Aug. 14, 2017).

otherwise delinquent behavior that, but for their age, would lead to a juvenile court referral.¹⁹⁸ One of the most widely used programs is Services to At-Risk Youth (STAR).¹⁹⁹ STAR came into effect in 1983, when the Texas Legislature approved a pilot project named “Services to Truants and Runaways.”²⁰⁰ Today, STAR provides services to “youth who would otherwise ‘slip through the cracks’ [to prevent them] from entering the foster care and juvenile justice systems by offering youth and their families early intervention (and later, prevention) services.”²⁰¹ The goal of STAR is to obviate the need for more severe legal intervention or entry into the foster care system.²⁰² Children may be referred to the program by school personnel, local family protective services, juvenile department staff, and other community health and mental health service providers.²⁰³

TJJD also provides a variety of programs that aim to give even more protection to certain groups of juveniles.²⁰⁴ For example, juveniles with mental health disorders and substance abuse addictions may be placed in the Special Needs Diversionary Program.²⁰⁵ The Special Needs Diversionary Program (SNDP) was implemented in 2001 to address the particular concerns of mentally ill juveniles entering the juvenile system.²⁰⁶ The program was designed to provide intense supervision and prevention services with the help of local mental health providers to

198. AGENCY COORDINATION, *supra* note 197, at 819 (describing various state and community-sponsored programs aimed at addressing delinquent behavior).

199. TEX. FAM. CODE ANN. § 264.301 (West 1996); *Prevention and Early Intervention (PEI) Programs*, *supra* note 197.

200. Act of 1983, 68th Leg., R.S., ch. 1095, 1991 Gen. and Spec. Law 2029 (West); Jack Nowicki, *The Services to At Risk Youth “STAR” Program*, THEOTX.ORG, <http://www.theotx.org/wp-content/uploads/2016/10/TX-STAR-Program.pdf> (last visited Aug. 14, 2017).

201. Nowicki, *supra* note 200.

202. *Id.*; *Prevention and Early Intervention (PEI) Programs*, *supra* note 197.

203. Nowicki, *supra* note 200.

204. *Programs and Facilities*, TEX. JUV. JUST. DEP’T, <https://www.tjjd.texas.gov/programs/Default.aspx> [<https://perma.cc/STX9-7GEA>] (last visited Aug. 14, 2017).

205. *Special Needs Diversionary Program (SNDP)*, TEX. JUV. JUST. DEP’T, <https://www.tjjd.texas.gov/services/sndp.aspx> [<https://perma.cc/4PA6-228Q>] (last visited Aug. 14, 2017).

206. *Id.*

ensure juveniles are rehabilitated.²⁰⁷ Youth receive individual and family counseling; frequent visits from probation officers; mentoring; special education services; and life skills training.²⁰⁸ As a result of these interventions, many of these juveniles avoid repeat referrals and have a lower risk of obtaining an adult conviction.²⁰⁹

General diversionary programs strive to protect low-risk offenders.²¹⁰ Low-risk juveniles are typically referred to a juvenile probation departments for first-time misdemeanor offenses, truancy, and running away.²¹¹ The diversion program essentially works to prevent the juvenile from having an adjudication on their criminal record.²¹² Typically, a juvenile who agrees to abide by informal probationary terms will not only avoid formal probation, but court altogether.²¹³ The prosecutor must initially approve the informal probation status, probation terms, and agree to forego a formal court hearing on the charges in exchange for the juvenile's promise to abide by the terms.²¹⁴ If the juvenile meets the necessary conditions in an approved agreement, they can be released from informal supervision without the threat of prosecution.²¹⁵ Most diversionary programs implement supervision terms similar to formal probation terms,²¹⁶ but the effect is a juvenile

207. TEX. JUVENILE PROBATION COMM'N, OVERVIEW OF THE SPECIAL NEEDS DIVERSIONARY PROGRAM FOR MENTALLY ILL JUVENILE OFFENDERS 18 (2010), <http://www.tjpd.texas.gov/publications/reports/RPTOTH201102.pdf>.

208. *See generally id.* at 1, 13, 17 (describing various diagnosis made to juveniles and subsequent treatments provided, covering a wide range of activities).

209. *See id.* at 18 (stating the diversionary program resulted in substantive diversion from former TYC program).

210. *See, Diversion Programs*, DALLASCOUNTY.ORG, http://www.dallascounty.org/department/juvenile/diversion_courts.php [<https://perma.cc/6QXT-T47Y>] (last visited Aug. 14, 2017) (explaining diversion programs are a form of treatment that will "prevent youth from permeating into the juvenile system.").

211. *Id.*

212. *Diversion Programs in Texas*, DUNHAMLAW.COM, <https://www.dunhamlaw.com/diversion-programs-texas> [<https://perma.cc/LK89-KTHC>] (last visited Aug. 14, 2017).

213. *See generally Diversion from Formal Juvenile Court Processing*, OJJDP.GOV, https://www.ojjdp.gov/mpg/litreviews/Diversion_Programs.pdf [<https://perma.cc/45N8-CBUD>] (last updated Feb. 2017) (discussing juvenile diversion programs).

214. *See, e.g., Diversion Program*, COLLINGCOUNTYDA.COM, <https://collincountyda.com/diversion-program> [<https://perma.cc/CC5Y-7Q4H>] (last visited Aug. 14, 2017) (discussing the requirements to qualify for the Collin County diversion program).

215. *Id.*

216. *Id.*

under informal supervision will have a record showing the prosecutor elected to drop their arrest charges.²¹⁷

The concept the Texas legislature appears to promote through its range of preventative measures is merely an extension of the rehabilitative goal of the juvenile justice system.²¹⁸ Because juvenile offenders are less culpable than adult offenders, juvenile courts and justice departments offer a variety of diversionary programs to prevent juveniles from progressing deeper into the juvenile system.²¹⁹ TJJJD incorporates a progressive-sanctions model to reflect only the amount of intervention necessary to address a juvenile's particular delinquent behavior.²²⁰ The Texas Legislature has codified preventative measures resulting in less severe sanctions for certain juveniles; and in some cases, no sanction at all.²²¹ As such, juveniles adjudicated for a non-sexual offense under Article 62 should be treated the same when determining sex offender registration status. In other words, with rehabilitation and progressive sanctions as the main focus.²²² This application would provide the basis for exempting juveniles from registration for *non-sexual* Article 62 offenses as yet another natural extension of the legislature's intent to promote rehabilitation.

217. *Id.*

218. *See Overview, supra* note 28 (emphasizing rehabilitation in Texas's juvenile system).

219. *Dallas County Juvenile Department*, DALLASCOUNTY.ORG, http://www.dallascounty.org/department/juvenile/diversion_courts.php [<https://perma.cc/6BDT-B6YS>] (last visited Aug. 14, 2017).

220. TEX. FAM. CODE ANN. § 59.001 (West 2003).

221. *See, e.g.*, TEX. FAM. CODE ANN. § 52.032 (West 2013) (discussing first offender program); *Id.* § 54.0401 (discussing community-based programs); *Id.* § 58.03 (discussing deferred prosecution).

222. *Overview, supra* note 28.

B. *Registration for Non-Sexual Offenses Does Not Protect the Public—It Harms Juveniles*

The sex offender registry is designed to track and monitor offenders within the community, ensure proper adherence to sentencing, and expedite apprehensions when necessary.²²³ At its core, the sex offender registry is concerned with one thing: public safety.²²⁴ Some juvenile justice advocates argue the registry was never intended to apply to juveniles.²²⁵ Data shows that adult sex offenders are more inclined to reoffend, which necessitates a registry to protect the public.²²⁶ Current data on juvenile sex offenders, however, shows the exact opposite: juveniles are less inclined to recidivate when compared to adults.²²⁷

Generally, juvenile offenders are not career criminals; they are merely experimenting.²²⁸ In 2000, TYC (as TJJD was formerly known) reviewed criminal records of seventy-two “violent” juveniles adjudicated of sex offenses.²²⁹ TYC discovered that after three years, almost ninety-

223. 34 U.S.C. § 20901 (2017); *Legislative History*, OJP.GOV, <https://ojp.gov/smart/legislation.htm> [<https://perma.cc/Y4RW-8LVS>] (last visited Aug. 14, 2017).

224. 34 U.S.C. § 20901 (2017); *About SMART*, OJP.GOV, <https://ojp.gov/smart/about.htm> [<https://perma.cc/TWY3-GKZB>] (last visited Aug. 14, 2017). Although SORNA has evolved and implemented many stringent changes, the Act has maintained focus on the singular goal of public safety. See *Legislative History*, *supra* note 223 (highlighting legislative updates and alterations to SORNA).

225. Deitch, *supra* note 47 (advocating that “[s]ex offender registration was not created with juveniles in mind and is therefore more harmful to juveniles than it is to adults.”).

226. *Id.*

227. See e.g., FRANKLIN E. ZIMRING, *AN AMERICAN TRAVESTY: LEGAL RESPONSES TO ADOLESCENT SEXUAL OFFENDING* 56–62 (2004) (describing the low frequency of sexual offense recidivism by juvenile offenders); Margaret A. Alexander, *Sexual Offender Treatment Efficacy Revisited*, 11 *SEXUAL ABUSE: A J. OF RES. AND TREATMENT* 110–12 (1999) (touting efficacy of sex offender treatment reflected in lower rates of recidivism in juveniles and other offenders); Michael F. Caldwell, *What We Do Not Know About Juvenile Sexual Reoffense Risk*, 7 *CHILD MALTREATMENT* 294–95 (2002) (observing lower recidivism rates in juveniles when compared to rates of adult sex offenders); Lorrain R. Reitzel & Joyce L. Carbonell, *The Effectiveness of Sexual Offender Treatment for Juveniles as Measured by Recidivism: A Meta-analysis*, 18 *SEXUAL ABUSE: A J. OF RES. AND TREATMENT* 413–14 (2006) (discussing lower rate of recidivism in juveniles when compared to adult sex offenders). Reitzel and Carbonell’s report goes on to show a dramatic reduction in recidivism in juvenile offenders who receive treatment, supporting the assertion that sex offender treatment is effective. *Id.*

228. Dunn, *supra* note 186.

229. Deitch, *supra* note 47

five percent of the juveniles were one-time offenders.²³⁰ Even on a nationwide level, juvenile recidivism rates remain relatively low.²³¹ Current data also confirms the registry does not reduce the probability of re-offending, nor does it serve as general deterrence to the public.²³² Based on these statistics, many juvenile justice advocates argue that the sex offender registry as applied to juveniles is futile.²³³

TJJD's predominant task of preventing the influx of juveniles in the adult criminal justice system is similarly affected by arbitrary registration laws.²³⁴ As of 2010, TJJD confirms that juveniles participating in a delinquency prevention program are less likely to re-offend than juveniles not participating in a prevention program.²³⁵ When juveniles are placed in programs that specifically target their particular risks and needs, they recidivate at lower rates than juveniles placed in programs not specifically designed for them.²³⁶ The "risk principle" suggests "matching offenders with the appropriate level of supervision and services improves outcomes."²³⁷ While research attributes a 25.2 recidivism rate after participation in sex offender treatment therapy,²³⁸

230. *See id.* (finding "only 4.2% of these juveniles were rearrested for a sexual offense after three years.").

231. *See id.* (citing national recidivism rates from a national study at "between 5-14%.")

232. *See generally* ELIZABETH J. LETOURNEAU ET AL., MED. UNIV. SOUTH CAL., EVALUATING THE EFFECTIVENESS OF SEX OFFENDER REGISTRATION AND NOTIFICATION POLICIES FOR REDUCING SEXUAL VIOLENCE AGAINST WOMEN 3 (Sept. 2010), <https://www.nejrs.gov/pdf/files/1/nij/grants/231989.pdf> [<https://perma.cc/LM5Y-6BYU>] (reporting online registration did not influence deterrence in adult sex crimes); *see* Deitch, *supra* note 47 ("Existing research finds that juvenile registration does very little to enhance public safety because it does not reduce either new first-time sex offenses or sexual reoffending.").

233. *See* Deitch, *supra* note 47 (explaining juveniles suffer at a greater rate due to a lack of cognitive development and life experiences as compared to adults). "Sex offender registration was not created with juveniles in mind and is therefore more harmful to juveniles than it is to adults. Adults and juvenile sex offenders are developmentally and motivationally different and because of these differences, the public registration of juveniles does not enhance public safety." *Id.*

234. *See generally* Wakefield, *supra* note 1, at 142 (discussing how registration and notification laws might actually lead to deviant behavior).

235. *See Juvenile Recidivism Trends*, TEX. JUV. JUST. DEP'T (2012), <http://www.tjtd.texas.gov/statistics/2012DataCoordConf/Recidivism%20Trends.pdf> [<https://perma.cc/V5FX-VUTK>] (reporting juveniles who enter a program recidivate at a lower rate than those who do not).

236. *Id.*

237. *Id.*

238. *See id.* (highlighting a recidivism rate of 25.2% after participation in sex offender treatment).

the data does not distinguish between offenders adjudicated of sexual offenses and those adjudicated of non-sexual offenses. Consequently, there is no data suggesting that participation in sex offender treatment has been successful for juveniles adjudicated of a non-sexual offense, nor is there any support for the continuation of such a practice.²³⁹

Even an order of deferred registration is an insufficient safeguard against collateral consequences of sex offender registration because the underlying decision remains discretionary.²⁴⁰ In this case, exemption from the duty to register is contingent upon successful completion of sex offender treatment.²⁴¹ This is problematic because juveniles with non-sexual reportable adjudications subject to sex offender therapy are placed at a significant disadvantage.²⁴² Treatment typically occurs in group therapy and individual therapy sessions.²⁴³ Juveniles reach a critical step in the treatment process once they are able to describe the offensive behavior at issue and accept responsibility.²⁴⁴ However, a juvenile with a non-sexual adjudication in treatment will have nothing to admit—much less anything to contribute to the discussion.²⁴⁵ Therapists may perceive

239. *See generally id.* (focusing research on recidivism rates based on participation in intervention programs and paying minimal attention to type of offense that brought offender into contact with such programs). The only criminal history factors TJJD found to have an effect on recidivism were the number of prior adjudications; the presence of prior violent adjudications; and the presence of prior non-violent felony adjudications. *Id.*

240. TEX. CRIM. PROC. CODE ANN. § 62.352(b) (West 2017).

241. *Id.*

242. *See* Deitch, *supra* note 47 (discussing expert opinion on the efficacy of sex offender treatment; specifically opining treatment is most effective when the juvenile is adjudicated for a sexual offense, but silent regarding adjudication for non-sexual offenses).

243. *See Specialized Correctional Treatment*, TEX. JUV. JUST. DEP'T, https://www.tjjd.texas.gov/programs/special_treatment.aspx [<https://perma.cc/WSX7-DFEP>] (last visited Aug. 14, 2017) (identifying the types of treatment available for youth).

244. *See, e.g., Pegasus Treatment Programs for Adolescents with Sexual Behavior Problems*, PEGASUS SCH. INC., <http://www.pegasusschool.net/programs> [<https://perma.cc/BV4K-69NU>] (last visited Aug. 14, 2017) (“The goals of treatment include victim empathy, accepting responsibility, comprehension of laws and statutes, and development of effective coping skills focusing on high risk situations.”).

245. Michael Barajas, *In Texas, Juvenile Sex Offenders Get Virtual Life Sentence*, SAN ANTONIO CURRENT (May 7, 2013), <https://www.sacurrent.com/sanantonio/in-texas-juvenile-sex-offenders-get-virtual-life-sentence/Content?oid=2246573> [<https://perma.cc/NWP3-QH3G>]. Dominic was convicted of aggravated sexual assault of a child, his sister. *Id.* Following his release, he was arrested for a parole violation when he did not discuss the assault in explicit detail as part of his treatment program. *Id.* Dominic consistently denied his guilt; around the time of his parole violation, his sister signed an affidavit claiming the molestation never occurred. *Id.*

such a lack of admission as resistance to the therapeutic process or a denial of the seriousness of the offense.²⁴⁶ This creates a potential for unsuccessful discharge from treatment, which precludes automatic exemption from registration.²⁴⁷ Simply stated, it is not appropriate to condition a juvenile's sex-offender registration status on his or her successful completion of sex-offender therapy when that juvenile was adjudicated for a non-sexual offense.

Moreover, the juveniles ordered into treatment for a sex offense may feel less inclined to engage in treatment alongside juveniles with non-sexual reportable adjudications. Engaging in group therapy is a slow process, often hindered by denial, shame, embarrassment, or lack of remorse.²⁴⁸ A successful treatment process is largely dependent on participants who are similarly situated.²⁴⁹ Therefore, mixing sex offenders with non-sex offenders could derail the treatment process.²⁵⁰ Not only would offenders carrying a reportable sexual adjudication likely feel embarrassed to discuss their offense in front of non-sexual offenders, they may resent someone who is unable to fully appreciate their situation.²⁵¹ The mere participation of non-sexual offenders in treatment may thereby adversely affect the successful treatment of actual sex offenders. Thus, the scope of collateral consequences stretches far beyond the non-sexual offender.

246. See *The Program*, YOUTH RANCH: A RESIDENTIAL TREATMENT CTR., <http://brookhavenyouthranch.org> [<https://perma.cc/9Y4S-QMP3>] (last visited Aug. 14, 2017) (indicating that even polygraph examinations are used to determine honesty in participation).

247. See TEX. CODE CRIM. PROC. ANN. § 62.352 (West 2015) (announcing courts retain authority to exempt juveniles upon completion of treatment).

248. See generally *Psychotherapy: Understanding Group Therapy*, AM. PSYCHOL. ASS'N, <http://www.apa.org/helpcenter/group-therapy.aspx> [(last visited Aug. 14, 2017) (discussing group therapy as a means for affecting positive change).

249. See *id.* (emphasizing a support network of individuals in similar situations is a rewarding experience).

250. See *id.* (answering that individuals improve most when surrounded by those with similar difficulties).

251. YOUTH RANCH, *supra* note 246.

C. *Discretionary Laws Disproportionately Affect Marginalized Groups*

Marginalized groups have historically paid a higher cost to society compared to the overwhelming majority.²⁵² This adversity is not confined to certain age groups.²⁵³ As a result, juveniles face adverse effects of marginalization when they belong to minority groups.²⁵⁴ More concerning, empirical data shows that certain juvenile minority groups are negatively affected by sex offender registration more often than their white, male, heterosexual counterparts.²⁵⁵

i. *Databasing by Race and Class*

With the advent of modern technology, many concerns about confidentiality and preservation of juvenile information have surfaced.²⁵⁶ These concerns are especially significant for juveniles ordered to register as a sex offender. Although the juvenile system is designed to preserve confidentiality, compliance with Texas sex offender registration laws necessarily requires increased data collection through the use of technological advances.²⁵⁷ Because of this, a large amount of juvenile information is collected and stored in publicly accessible

252. See *Marginalization and Role of Civil Society*, SOC'Y GUIDE, <http://www.sociologyguide.com/civil-society/marginalization.php> [<https://perma.cc/RD7Q-SG7E>] (last visited Aug. 14, 2017) (discussing limitations on marginalized societies).

253. See Michelle Sicignano, *The Criminalization of Marginalized Groups*, SOC. JUST. SOLUTIONS (Oct. 26, 2012), <http://www.socialjusticesolutions.org/2012/10/25/the-criminalization-of-marginalized-youth> [<https://perma.cc/N2P2-AGYZ>] (explaining the marginalization of youths in the criminal justice system).

254. See *id.* (“Marginalized youth are generally from low-income families, racial minorities, or disabled, and these youth ‘disproportionately populate the juvenile court . . .’”).

255. Rebecca L. Fix et al., *Disproportionate Minority Contact: Comparisons Across Juveniles Adjudicated for Sexual and Non-Sexual Offenses*, 29 SEXUAL ABUSE: A J. OF RES. AND TREATMENT 291, 293-306 (2017) (discussing data showing a disproportionate representation of minority juvenile sex offenders compared to white counterparts).

256. See Kevin Lapp, *Databasing Delinquency*, 67 HASTINGS L.J. 195, 197 (2015) (explaining that the goal of protecting juveniles’ information has been diminished by technology); see also *Privacy and Information Technology*, STAN. ENCYCLOPEDIA OF PHIL. (Nov. 20, 2014), <https://plato.stanford.edu/entries/it-privacy> (discussing the threats of information technology on individual privacy).

257. See *id.* (discussing how information about juveniles is collected through public and private sources “making it available to law enforcement nationwide, private employers, public housing authorities, colleges and the general public . . .”).

databases.²⁵⁸ In fact, children as young as ten years-old wind up on these databases.

“Dataveillance,” coined by Roger Clarke in the late 1980’s, refers to the systematic use of computer-based data collecting technology in connection with investigating or monitoring individuals.²⁵⁹ Many public agencies and employers rely on the information collected, which has detrimental impacts on youth.²⁶⁰

These one-sided, negative biographies written by a coercive institution label youth in permanent and stigmatizing ways. This harms individual youth and distorts the perceptions of them as a group with lasting policy implications.²⁶¹

More importantly, dataveillance imitates race and class biases inherent in the criminal justice system.²⁶² As a result of such systematic bias, these groups make up the majority of database biographies, increasing their likelihood of incarceration.²⁶³

ii. Discrimination Against the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) Community

As stated above, the public appears more willing to decriminalize teenagers engaging in consensual sex, as evidenced by Romeo and Juliet laws.²⁶⁴ However, data suggests the public is less forgiving of

258. See *Texas Sex Offender Registry*, TEX. DEP’T PUB. SAFETY, <https://secure.txdps.state.tx.us/SexOffender> [<https://perma.cc/JCQ9-G9JY>] (providing public access to the Texas Sex Offender Registry) (last visited July 19, 2017).

259. Roger Clarke’s *Dataveillance and Information Privacy Home-Page*, ROGERCLARKE.COM, <http://www.rogerclarke.com/DV/#SurvD> [<https://perma.cc/RQ7W-597Y>] (last visited Aug. 14, 2017).

260. Lapp, *supra* note 256, at 229–31.

261. *Id.* at 198.

262. See *id.* 230–31 (indicating nearly 80% of individuals charged with a crime are poor).

263. *Id.* at 230. Lapp indicates law enforcement has a predilection towards collecting information belonging to minority and poor defendants; this is not limited to formal convictions or adjudications but includes arrests and suspicions as well. He concludes with stating “the great bulk of criminal justice biographies of youth are written about the poor, and people of color (and especially poor people of color).” *Id.*

264. See *supra* notes 188–196 and accompanying text. See also Beck & Boys, *supra* note 195, at 663–64 (highlighting survey results from Wisconsin and California where a majority of respondents indicated teens engaged in consensual sexual behavior should not be charged with statutory rape).

consensual sex between LGBTQ youth.²⁶⁵ A study conducted in 2010 indicated more people supported sex offender registration for gay youth than for heterosexual youth.²⁶⁶ The bias transcended across genders, particularly stigmatizing gay male offenders.²⁶⁷ Salerno's study suggests the disproportionate discriminatory treatment of gay male offenders was the result of retributive motives, such as moral outrage—not a concern for protecting society.²⁶⁸

The discriminatory treatment of LGBTQ juvenile sex offenders also influences prosecutorial discretion when deciding to bring charges against a juvenile alleged to have engaged in sexual contact with another juvenile.²⁶⁹ Kaitlyn Hunt's case is an unambiguous display of such discrimination against the LGBTQ community. Hunt was an eighteen-year-old female from Florida arrested for having a sexual relationship with her fourteen-year-old girlfriend.²⁷⁰ The girlfriend's parents reported Hunt to the police once they learned of the relationship.²⁷¹ Kaitlyn's case received national attention as her lawyers argued the prosecution would not have charged her with statutory rape if she were a male.²⁷² Although the prosecutor denied prejudicial treatment, Kaitlyn's parents opined that arresting teenagers for sexual behavior inevitably transforms high schools into prisons.²⁷³ Kaitlyn spent 120 days in jail for battery, interference with child custody, and contributing to

265. Salerno et al., *supra* note 47.

266. *Id.* at 403.

267. *See id.* at 405 (reporting there were differing public reactions to gay versus lesbian juveniles engaged in sexual activity that can be prosecuted). Results from the survey tended to show more discriminatory punishment leveled at gay male juvenile offenders, including increased support for sex offender registration, compared to their female and heterosexual male counterparts. *Id.* at 403–06.

268. *Id.* at 400–03.

269. *See, e.g.,* Sara Ganin, *Gay Florida Teen Kaitlyn Hunt Pleads No Contest as Part of Deal*, CNN.COM (Oct. 9, 2013, 6:48 AM), <http://www.cnn.com/2013/10/03/justice/florida-kaitlyn-hunt-plea-deal> [<https://perma.cc/L53M-AU8T>] (reporting that Kaitlyn's lawyers believed the prosecutor would not have prosecuted the juvenile had sexual relation been between a male and a female).

270. Carol Kuruvilla, *Kaitlyn Hunt, Florida Teen Jailed for Sex with Underaged Girlfriend, Now Dating Older Woman*, N.Y. DAILY NEWS, (Feb. 15, 2014, 1:01 PM), <http://www.nydailynews.com/news/national/kaitlyn-hunt-jailed-underaged-sex-dating-older-woman-article-1.1615514>.

271. *Id.*

272. Ganin, *supra* note 269.

273. *Id.*

dependency of a child.²⁷⁴ She was ordered to serve two years of house arrest with an ankle bracelet followed by nine months of probation.²⁷⁵

Today, the LGBTQ community represents a disproportionate percentage of the juvenile justice population.²⁷⁶ There are almost 300,000 gay and transgender youth arrested every year and more than 60% of that population are black or Latino.²⁷⁷ The overrepresentation of black and Latino LGBTQ youth is more apparent when viewed at a national level.²⁷⁸ Transgender youth make up just five to seven percent of the national population, but represent approximately 15% of juveniles in the justice system.²⁷⁹ Transgender youth advocates contend the overrepresentation is due to “abandonment by their families and communities, and victimization in their schools—sad realities that place this group of young people at a heightened risk of entering the school-to-prison pipeline.”²⁸⁰

Youth are also coming out to their families at a younger age, which may be met with resistance.²⁸¹ If conflict ensues, it may likewise lead to familial rejection, homelessness, and in some cases, the first encounter with the juvenile system.²⁸² LGBTQ youth comprise almost 40% of homeless youth; a group that suffers an increased probability of arrest for

274. *Id.*

275. *Id.*

276. See Jerome Hunt & Aisha C. Moodie-Mills, *The Unfair Criminalization of Gay and Transgender Youth*, CTR. FOR AM. PROGRESS (June 29, 2012, 9:00 AM), <https://www.americanprogress.org/issues/lgbt/reports/2012/06/29/11730/the-unfair-criminalization-of-gay-and-transgender-youth> [<https://perma.cc/V98Z-58KN>] (“Gay, transgender, and gender nonconforming youth are significantly over represented in the juvenile justice system . . .”).

277. *Id.*

278. *Id.*

279. *Id.*

280. *Id.*

281. Hunt & Moodie-Mills, *supra* note 276. See also Darrel Higa et al., *Negative and Positive Factors Associated With the Well-Being of Lesbian, Gay, Bisexual, Transgender, Queer, and Questioning (LGBTQ) Youth*, 46 YOUTH & SOC’Y 663, 676 (2012) (describing a range of negative responses youth anticipated their families would express following their family’s discovery of their LGBTQ identity); Juline A. Koken et al., *Experiences of Familial Acceptance-Rejection Among Transwomen of Color*, 23 J. FAM. PSYCHOL. 853, 856–59 (2010) (discussing various parental acceptance-rejection outcomes experienced by minority transwomen after coming out to their families, varying from warmth and affection, parental hostility, to undifferentiated rejection).

282. Hunt & Moodie-Mills, *supra* note 276.

curfew violations and sleeping in public places.²⁸³ Additionally, homeless youth are apt to turn to criminal behavior just to survive.²⁸⁴ Despite the overrepresentation of LGBTQ individuals in the juvenile justice system, the system's constituents are not equipped to deal with the distinct challenges these juveniles face.²⁸⁵

Similarly, once in the system, LGBTQ juveniles are erroneously labeled "sexual deviants" due to their sexual orientation, gender identity, or gender nonconformity.²⁸⁶ "Gay and transgender youth 'are more likely to be prosecuted for age-appropriate consensual sexual activity than their heterosexual counterparts—a lopsided application of the law, which has devastating consequences for gay and transgender youth.'"²⁸⁷ LGBTQ juveniles charged with nonsexual offenses report being forced to undergo sex offender treatment²⁸⁸ and endure restrictive placements because of their LGBTQ status.²⁸⁹ LGBTQ juveniles are subjected to heightened interventions, such as court ordered conversion therapy, yet provided less safety measures in detention.²⁹⁰ Such punitive treatment of LGBTQ youth sends a message that aversive discrimination based on sexual orientation and identity is socially acceptable; it simply is not.

283. *See id.* (stating most homeless LGBTQ youth are involved with the juvenile justice system in some capacity).

284. *See id.* (including "survival sex", drug dealing, and theft as criminal behavior youth resort to while homeless).

285. *See id.* (declaring school administrators, law enforcement, district attorneys, judges, and even juvenile defenders criminalize LGBTQ youth because they fail to understand the hardships they experience); *see also* KATAYOON MAJDET AL., HIDDEN INJUSTICE: LESBIAN, GAY, BISEXUAL, AND TRANSGENDER YOUTH IN JUVENILE COURTS, 104-06 (2009) (highlighting overreaction by corrections officers after observing youth engaged in normal teenage behavior).

286. Hunt & Moodie-Mills, *supra* note 276.

287. *Id.*; *see also* Salerno et al., *supra* note 47 (showing an accommodation for heterosexual youth but not gay youth engaging in similar sexual activities when contemplating punishment for such acts).

288. TEX. CODE CRIM. PROC. ANN. art. 62.351(a). *See* MAJDET AL., *supra* note 285, at 3.

289. MAJDET AL., *supra* note 285, at 106-11 (discussing the various methods of segregating LGBTQ youth and the misguided explanations for doing so within juvenile corrections facilities). Majd's report goes on to describe how LGBTQ youth are isolated from the general population, not as a form of protection, but rather as punishment, perhaps in light of correctional administrator's naïve belief that gay children are sexual predators. *Id.* at 107.

290. Hunt & Moodie-Mills, *supra* note 276.

VII. PROPOSED SOLUTIONS

A. *Minimum SORNA Compliance Better Serves Juvenile Justice Rehabilitative Goals*

At a minimum, SORNA mandates registration²⁹¹ for juveniles who are at least 14 years of age²⁹² and have been adjudicated delinquent for offenses comparable to, and including, aggravated sexual abuse.²⁹³ A plain reading of the statute suggests SORNA was never intended to be punitive as applied to juveniles; rather it was meant to foster the juvenile system's commitment to rehabilitation and confidentiality by reserving juvenile registration for the most egregious conduct committed by older juveniles.²⁹⁴ Indeed, "comparable" offenses include "engaging in a sexual act with another by force or the threat of serious violence; or . . . by rendering unconscious or involuntarily drugging the victim; or . . . with a child under the age of 12."²⁹⁵ "Sexual acts" include oral to genital contact; oral to anal contact; any genital or anal penetration; and any genital touching of a child under sixteen-years-of age.²⁹⁶ As applied to non-sexual offenses, SORNA contemplates registration only in very limited circumstances.²⁹⁷ Regarding jurisdictional implementation,

291. 34 U.S.C. § 20913 (2017).

292. *Id.* § 20911(8).

293. *See* 18 U.S.C. § 2241(a) (2012) (defining aggravated sexual abuse as causing another person to "engage in a sexual act by using force against that other person; or (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so.").

294. *Id.* § 2241(a)-(c) (2012); Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, 81 Fed. Reg. 147, 50553 (Aug. 1, 2016); NATIONAL GUIDELINES, *supra* note 139, at 17 (emphasizing the particularly aggressive nature of the qualifying acts that trigger SORNA application).

295. 18 U.S.C. § 2241(a)-(c) (2012); NATIONAL GUIDELINES, *supra* note 139, at 17 (citations omitted). A brief review of case law applying 18 U.S.C. § 2241 reveal the particularly heinous acts triggering § 2241 and subsequent offender registration. *See e.g.* U.S. v. J.A.S., Jr. 862 F.3d 543 (6th Cir. 2017) (providing evidence of juvenile offender's penile contact with his eight-year-old niece's vulva); U.S. v. JDT, 762 F.3d 984, 1002 (prohibiting a juvenile offender from escaping application of § 2241(c) because his penis was flaccid at the time he sexually assaulted five other boys, ranging in age from 5 to 7).

296. 18 U.S.C. § 2246(2) (2012); NATIONAL GUIDELINES, *supra* note 139, at 17.

297. *See* 34 U.S.C. § 20911(7)(A) (B) (2017) Kidnapping and false imprisonment are incorporated into the definition of "specified offense against a minor". "Specified offense against a minor" in turn is captured in the Amie Zyla expanded definition of sex offenses. *Id.* § 20911(5)(A)(ii).

sections 16912–16915 describe the registration and notification requirements states are required to implement.²⁹⁸ In light of these requirements, the Attorney General will evaluate whether a jurisdiction has “substantially implemented” SORNA provisions.²⁹⁹ Jurisdictions that fail to substantially implement SORNA requirements, as determined by the Attorney General, are punished with a 10% reduction in federal funds for public safety programs.³⁰⁰ In other words, states only need to comply with the bare minimum requirements under SORNA to prevent the reduction of federal funds.

Texas opted not to “substantially” implement SORNA.³⁰¹ In order to meet that statutory requirement, Texas would necessarily have to remove judicial discretion in the registration decision.³⁰² Substantial compliance would render certain offenses registrable and others non-registrable without any room for judicial discretion.³⁰³ Implementing SORNA would also require other amendments to the statutory language of Article 62 and subject Texas to significant costs in fully implementing SORNA.³⁰⁴ According to The (Texas) Senate Criminal Justice Committee, the estimated cost of compliance clearly outweighed a 10% reduction in federal assistance.³⁰⁵ Even a 2016 Federal Register Guide³⁰⁶ providing states with the option to certify a juvenile as an adult

298. 34 U.S.C. §§ 20912–20915 (2017). NATIONAL GUIDELINES, *supra* note 139, at 17.

299. 34 U.S.C. § 20927 (2017); *see also* NATIONAL GUIDELINES, *supra* note 139, at 9–13 (discussing the latitude jurisdictions receive when they elect the best method for implementing SORNA standards).

300. Jurisdictions that have not substantially implemented SORNA requirements will lose 10% of their Byrne Grants. 34 U.S.C. § 20927 (2017); NATIONAL GUIDELINES, *supra* note 139, at 11. This funding comes in the form of a grant to State and local government to provide additional personnel, equipment, supplies, and other various resources for a number of criminal justice-related departments and programs. *See* 34 U.S.C. § 10152 (2017).

301. TASK FORCE, *supra* note 143, at 8.

302. *Id.*

303. *Id.*

304. *Id.*

305. *Id.* at 11 n.37. The Senate Criminal Justice Committee estimated a \$38.8 million cost to implement SORNA requirements compared to an estimated \$1.4 million withholding of Byrne grant funding. *See* 34 U.S.C. § 10152 (2017).

306. Supplemental Guidelines for Juvenile Registration Under the Sex Offender Registration and Notification Act, 81 Fed. Reg. 147, 50553 (Aug. 1, 2016). Convicting a juvenile as an adult for a sexual offense compels registration under SORNA, thereby removing the discretionary standard Texas applies to juvenile offenders.

for prosecution in lieu of mandatory registration was not enough to prompt Texas's compliance.³⁰⁷

As they currently stand, Texas's sex offender registry laws frustrate the overall purpose of the juvenile justice system; they impede the rehabilitative process and compromise juvenile confidentiality. Even a relatively short amount of time on the sex offender registry can have a lasting impact on youth.³⁰⁸ Juveniles are ridiculed, socially stigmatized, beaten, and sometimes murdered because of their status as a registered sex offender.³⁰⁹ Juveniles registered as sex offenders struggle to find employment and housing.³¹⁰ Additionally, they may be prohibited from being near children, further complicating their ability to access education and secure stable housing.³¹¹ There may also be multigenerational effects on their children, as lifetime registrants may be barred from engaging in normal parenting acts, such as dropping their child off at school.³¹²

Supportive families face challenges when their child must register as a sex offender and is barred from residing close to or with children, including children in the same household.³¹³ Consequently, these families are forced to surrender their child to foster care or a juvenile home program.³¹⁴ This result appears to be the antithesis of the juvenile justice system's intent to provide protection and rehabilitation for youth sex offenders.³¹⁵

In light of the narrowly tailored standards detailed in SORNA, Texas's statutory expansion of reportable juvenile sex offenses is not only unnecessary, it is overly broad. It continues to subject underserving juveniles to the pernicious effects of registering as a sex offender.

307. *See id.*; TASK FORCE, *supra* note 143, at 8 (suggesting Texas's concerns over noncompliance have been alleviated by the Attorney General's broader review of state policies and practices).

308. *Registry*, *supra* note 195

309. *See id.* (reporting families of registered sex offenders experience harassment and physical violence).

310. *Id.*

311. *Id.*

312. *Id.*

313. *Id.*

314. *Registry*, *supra* note 195 (describing Jacob C.'s path from adjudicated sex offender to being placed in a juvenile home following a charge of criminal sexual conduct).

315. *See supra* note 44-55 and accompanying text.

Although completely eliminating non-sexual offenses is a drastic legislative amendment, the benefits Texas youth will derive are immeasurable. Without a dramatic legislative amendment, Texas's sex offender registry will continue to be a punitive, rather than rehabilitative, administration of justice.

B. *Remove Non-Sexual Offenses from the Definition of "Reportable Adjudication"*

Alternatively, the Texas Legislature can remedy the punitive nature of its discretionary sex offender laws without making a drastic legislative amendment. Texas could simply remove non-sexual offenses from the list of offenses that qualify for registration.³¹⁶ In other words, Texas judges will retain their discretion to order registration for qualifying offenses, but non-sexual offenses would no longer qualify.

Delaware's classification of offenders eligible for sex offender registration strikes the critical balance between public safety and the integrity of the juvenile justice system.³¹⁷ Delaware statutorily separates registration requirements for adult offenders and juvenile delinquents.³¹⁸ Accordingly, juveniles continue to be protected by the state. Upon an adjudication of a sex offense, and before ordering a sentence, the Family Court must order a comprehensive evaluation by a certified specialist in juvenile sex offender treatment to assess risk and provide treatment recommendations.³¹⁹ Bearing in mind the recommendation of the certified specialist, the Court must then conduct a sentencing hearing³²⁰ where the determination of whether to impose registration is driven by statutory procedure.³²¹ Specifically, Delaware's state sex offender registration laws identify certain sex offenses³²² that, upon adjudication,

316. See, e.g., TEX. CODE CRIM. PROC. ANN. art. 62.001(5)(E) (2017) ("[A] violation of Section 20.02 (Unlawful Restraint), 20.03(Kidnapping), or 20.04 (Aggravated kidnapping . . .)").

317. DEL. CODE ANN. tit 11, § 4120(b) (West 2013); DEL. CODE ANN. tit 11, § 4123 (West 2017).

318. See DEL. CODE ANN. tit 11, § 4123 (providing a separate and distinct provision of registrable offenses specifically for juvenile adjudications).

319. *Id.* § 4123(b).

320. *Id.* § 4123(c).

321. *Id.*

322. *E.g.* DEL. CODE ANN. tit 11, §770(a)(3) (West 2010) (rape in the fourth degree resulting from intentional sexual penetration without the victim's consent); *Id.* §§ 771-778 (West 2010) (Rape in the fourth degree; rape in the third degree; rape in the second degree; rape in the

the court is required to order registration and community notification.³²³ While Delaware's list of registrable offenses is long, every offense is either sexual in nature or committed with a sexual purpose.³²⁴ In fact, Delaware lists kidnapping,³²⁵ generally a non-sexual offense, in their list of registrable offenses, but expressly requires the offense be committed with a purpose to "violate or abuse the victim sexually."³²⁶

Moreover, Delaware's code provides room for judicial discretion for sex crimes not included in the enumerated list.³²⁷ The statute provides

[i]f the juvenile does not fit the criteria . . . above, the Family Court shall have the discretion to relieve the juvenile of registration and community notification requirements or to assign such juvenile to a lower tier than that prescribed . . . if the Court determines by a preponderance of the evidence that such juvenile is not likely to pose a threat to public safety.³²⁸

If the offense falls within the court's discretion, the court is ordered to consider relevant factors, including but not limited to the risk posed by the juvenile in the community, the nature and circumstances of the offense, the victim, the comprehensive evaluation, risk assessment and treatment recommendations, potential for rehabilitation, and the impact of registration on the juvenile.³²⁹

A study conducted in 2006 by Delaware's Juvenile Justice Department showed the overall recidivism rate for first-time registered sex offenders was relatively low.³³⁰ The juveniles were tracked for five years after their release from secure treatment facilities.³³¹ According to the report,

first degree; sexual extortion; bestiality; continuous sexual abuse of a child; criminal sexual conduct against a minor; and sexual abuse of a child by a person in a position of trust); *Id.* § 780 (female genital mutilation).

323. *See* DEL. CODE ANN. tit 11, § 4123(b) (West 2017).

324. *See id.* § 4123 (qualifying each offense with a sexual purpose).

325. *Id.* § 783 (kidnapping in the second degree); *Id.* § 783A (kidnapping in the first degree); *Id.* § 787(b)(2). *See also id.* § 1100A (dealing in a child, including trading, bartering, or selling a child under the age of 18).

326. DEL. CODE ANN. tit 11, § 4123(c)(1) (West 2017).

327. *Id.* § 4123(c)(2).

328. *Id.*

329. *Id.*

330. OFF. MGMT. & BUDGET STAT. ANALYSIS CTR., RECIDIVISM OF DELAWARE JUVENILE SEX OFFENDERS RELEASED IN 2001 (Sept. 2007), https://sac.delaware.gov/wp-content/uploads/sites/64/2017/05/recidivism_juvenile_2007-min.pdf [<https://perma.cc/53WN-8115B>].

331. *Id.* at 2.

only 5% of first-time offenders committed a second sex offense.³³² Although recidivism is still present, it is clear that Delaware's sex offender registration program has had success. Accordingly, Texas should amend its criminal code to include a similar sexual purpose or intent prerequisite for its registration laws and exclude non-sexual offenses.³³³

VIII. CONCLUSION

So, registered sex offender. Is your response still disgust? More likely than not, it still is. And again, that is quite normal. The purpose of this Comment is not to sympathize, but to expose the negative consequences of overly broad legislation. Texas's sex offender registry laws label non-sexual offenders as exactly the opposite—sex offenders.³³⁴ In fact, society considers sex offenders as some of the worst types of criminals. This perception necessarily implies that the same stigma cannot be true for criminals convicted of non-sexual crimes. And yet, Texas permits juvenile courts to order registration for non-sexual offenses.³³⁵ This practice only serves to mislabel and stigmatize children the Texas Legislature acknowledges are in both need of state intervention and worthy of significant protections. Texas's protective measures, as instituted by TJJD, become unequivocally worthless when juveniles adjudicated for non-sexual offenses are ordered to register as a sex offender.

The Texas Legislature has a choice. It can choose to follow Federal legislative curtailments defined in SORNA, Texas juvenile justice advocate recommendations opposing sex offender registration, and examples of legislation protecting juveniles from erroneous registration. Or, it can continue to damn the children they promise to protect. As they currently stand, Texas's sex offender registry laws frustrate the overall purpose of the juvenile justice system—and without a fundamental legislative change—will continue to do so.

332. *Id.* at 13.

333. *Id.*

334. See generally Barajas, *supra* note 245 (reporting on Texas's harsh sex offender registration laws).

335. *Id.* ("Texas is one of at least 10 states that put children found guilty in juvenile courts on public sex-offender registries . . . [and] has no limit on how young children placed on the registry can be.").