

Protecting Schools from Sex Offenders

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Legal Services

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Schools interact with various individuals including students, employees, parents, vendors, volunteers, and other community members. Sometimes those individuals are registered sex offenders. This paper answers frequently asked questions about the Texas Sex Offender Registration Program and reviews options for how schools should respond to registered sex offenders and how to increase the safety of their students at school.

LEGAL BACKGROUND

During the 1990's, in response to high profile cases of child sexual abuse and murder by, in some instances, prior sex offenders, the federal and state governments began enacting sex offender registration and notification laws. The federal government first addressed the issue in 1994 with the passage of the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program ("Wetterling Act"), found at 42 U.S.C. §§ 14071-14073, which established basic guidelines for states to use in tracking sex offenders, including such information as what offenses should require registration and requirements that states confirm sex offenders' places of residence at certain intervals. Shortly thereafter, Congress passed Megan's Law, 42 U.S.C. § 14071(e), to require public dissemination of certain information contained in the state registries and maintained by state and local law enforcement agencies.

In 2006, Congress passed the Adam Walsh Child Protection and Safety Act, Public Law 109-248. Title I is referred to as the Sex Offender Registration and Notification Act (SORNA), which replaced the registration and notification standards outlined in the Wetterling Act as of July 27, 2009. 34 U.S.C. §§ 20901–20962. SORNA includes more stringent registration and tracking provisions such as requirements for certain juvenile offenders to register and increased mandatory minimum sentences for sex offenders. SORNA also created the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART), a division of the U.S. Department of Justice's Office of Justice Programs. SMART is responsible for administering the SORNA registration and notification standards and various grant programs as well as coordinating training and technical assistance under the act. SMART issued [guidelines](#) for use in implementing the new SORNA standards. More information regarding [SMART](#) can be found on the office's website.

Over the years, the federal government continued to expand requirements related to sex offenders, including requiring states to participate in the National Sex Offender Registry (NSOR) maintained by the FBI (Federal Bureau of Investigation), to maintain a website version of the state's registry, and to add to their state offender registries federal offenders and court-martialed offenders.

Sex offenders are now required to register both in the state of their residence as well as in the state where they work or attend school (if different from their state of residence), to provide internet identifiers in the registration process, and to provide advance notice of any intended international travel.

Additionally, the jurisdictions of sex offender registration have grown to include federally recognized Indian tribes and U.S. territories, and the U.S. Marshal Service is now required to notify international communities when a U.S. registered sex offender is traveling to their country.

A [summary](#) of major federal legislation concerning sex offenders is available on the SMART Website.

TEXAS SEX OFFENDER REGISTRY

Texas acted prior to the federal government, enacting its first sex offender registration and notification laws in 1991. Texas laws were expanded over the years to encompass more offenses, to provide more specific requirements, and to comply with federal mandates. The relevant law can now be found at Texas Code of Criminal Procedure chapter 62.

What is the Texas Sex Offender Registration Program?

The Texas Sex Offender Registration Program, detailed in Texas Code of Criminal Procedure chapter 62, requires local law enforcement agencies to gather specific demographic, identifying, and other information from sex offenders. Chapter 62 also requires that the Texas Department of Public Safety (DPS) maintain a sex offender database, a compilation of the registration information submitted by the local agencies. The majority of the registration information is public and available on the [DPS Website](#).

Who is required to register as a sex offender in Texas?

An individual is required to register as a sex offender if that person has a *reportable conviction or adjudication*; if the person is required to register as a condition of parole, release to mandatory supervision, or community supervision; or if the person is an *extrajurisdictional registrant* as defined by the Texas Penal Code. Tex. Code Crim. Proc. art. 62.051(a), .052(a). A *reportable conviction or adjudication* is defined as a conviction or adjudication, including a juvenile's adjudication of delinquent conduct or a deferred adjudication, that is a conviction for or an adjudication for or based on the following offenses:

- continuous sexual abuse of young child or children, Texas Penal Code section 21.02;
- bestiality, Texas Penal Code section 21.09;
- indecency with a child, Texas Penal Code section 21.11;

- sexual assault, Texas Penal Code section 22.011;
- aggravated sexual assault, Texas Penal Code section 22.021;
- prohibited sexual conduct, Texas Penal Code section 25.02;
- aggravated kidnapping, Texas Penal Code section 20.04(a)(4), if the person committed the offense or engaged in the conduct with the intent to violate or abuse the victim sexually;
- burglary, Texas Penal Code section 30.02, if punishable under Texas Penal Code section 30.02(d) and the person committed the offense or engaged in the conduct with the intent to commit one of the felonies listed above;
- compelling prostitution, Texas Penal Code section 43.05;
- sexual performance by a child, Texas Penal Code section 43.25;
- possession or promotion of child pornography, Texas Penal Code section 43.26;
- unlawful restraint, Texas Penal Code section 20.02, kidnapping, Texas Penal Code section 20.03, or aggravated kidnapping, Texas Penal Code section 20.04, if the victim or intended victim was younger than 17;
- trafficking of persons, Texas Penal Code section 20A.02(a)(3), (4), (7), or (8), or continuous trafficking of persons, Texas Penal Code section 20A.03, if the offense is based partly or wholly on conduct constituting trafficking of persons;
- an attempt, conspiracy, or solicitation as defined by Texas Penal Code chapter 15 to commit an offense or engage in conduct listed above;
- prostitution, Texas Penal Code section 43.02;
- aggravated promotion of prostitution, Texas Penal Code section 43.04;
- online solicitation of a minor, Texas Penal Code section 33.021;
- a violation of the laws of another state, federal law, and laws of a foreign country or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of an offense listed above, but not if the violation results in a deferred adjudication;
- indecent exposure, Texas Penal Code section 21.08, if the offense is the second violation of the statute and it did not result in deferred adjudication; or
- the second violation of the laws of another state, federal law, the laws of a foreign country, or the Uniform Code of Military Justice for or based on the violation of an offense containing elements that are substantially similar to the elements of the offense of indecent exposure, but not if the second violation results in a deferred adjudication.

Tex. Code Crim. Proc. art. 62.001(5).

An offender required to register as a sex offender must register or verify completed registration with the designated law enforcement agency in the municipality or county (usually city police department or county sheriff) where the individual resides or intends to reside for more than seven days. Tex. Code Crim. Proc. art. 62.051(a). Offenders must also register in the municipality or county in which he or she spends more than 48 consecutive hours on at least three occasions during any month. Tex. Code Crim. Proc. art. 62.059. Additionally, offenders who work or attend school at an institution of higher education must register with the institution's campus security or the municipality or county in which the institution is located if there is no campus security. Tex. Code Crim. Proc. arts. 62.0045, .153(a). Offenders who live in another state but who work or attend school in Texas must register with the municipality or county in which the offender works or attends school. Tex. Code Crim. Proc. art. 62.152(a)-(b).

The law applies retroactively but only to reportable convictions or adjudications that occurred on or after September 1, 1970. Tex. Code Crim. Proc. art. 62.002(a). An offender is required to register even if the criminal case is on appeal or the offender receives a pardon, unless the conviction or adjudication is set aside on appeal by a court or the pardon is based on a proof of innocence. Tex. Code Crim. Proc. art. 62.002(c). The sex offender is required to periodically verify the offender's registration information and report any changes to the offender's information, including changes of address or lack of address or temporary residences. Tex. Code Crim. Proc. art. 62.051. The length of time a sex offender must register generally depends on the offense committed; for example, in the case of sexual assault or certain trafficking offenses, the offender must register for life, while in the case of attempted sexual assault, the offender must maintain registration for 10 years. Tex. Code Crim. Proc. art. 62.101. Offenders must comply with all specified deadlines as to when registration, verification of registration, and other reporting duties must occur, and failure to comply with any part of the sex offender registration program is a felony offense. Tex. Code Crim. Proc. art. 62.102.

Can a sex offender be exempted from registration?

It depends. Certain young adult sex offenders may be exempted from required registration. An offender may petition the court with jurisdiction over the offender's case for an exemption if:

- the only reason the offender is required to register is due to a single reportable conviction or adjudication, other than an adjudication of delinquent conduct, for indecency with a child or sexual assault; and
- at the time of the offense the court makes the following age-related findings:
 - the victim was at least 15 years old and the offender was not more than four years older than the victim; and
 - if applicable, due to deferred adjudication community supervision, the charge was based solely on the ages of the offender and the victim at the time of the offense.

Tex. Code Crim. Proc. art. 62.301(a)-(b).

An offender who was convicted of or placed on deferred adjudication community supervision for indecency with a child or sexual assault *before* September 1, 2011, may petition the court for exemption only if the offender would have been entitled to the above age-related findings had the conviction or deferred adjudication community supervision occurred *after* September 1, 2011. Tex. Code Crim. Proc. art. 62.301(c).

In determining whether to grant an exemption, the court must determine by a preponderance of the evidence that (1) the exemption would not threaten public safety, (2) the victim consented to the conduct, (3) the exemption is in the best interest of the victim, and (4) the exemption is in the best interest of justice. Tex. Code Crim. Proc. art. 62.301(d). Exemptions that are granted may be revoked if the offender receives another reportable conviction or adjudication requiring registration. Tex. Code Crim. Proc. art. 62.301(e).

A juvenile court may enter an order exempting a juvenile sex offender from registration in certain situations. During or after the disposition of the offender's case, the juvenile sex offender may also ask the juvenile court to defer a decision regarding registration until after the offender has completed required treatment or to classify the offender's registration information as nonpublic. A juvenile sex offender who has already registered for adjudication of delinquent conduct may also seek an exemption from registration. Tex. Code Crim. Proc. art. 62.351-.353.

How will law enforcement and the public know the risk of a sex offender reoffending?

Each sex offender is assigned a numeric risk level by the Texas Department of Criminal Justice (TDCJ), the Texas Juvenile Justice Department (TJJJ), or the court with jurisdiction, as appropriate, when the offender is released from a penal institution or when the court places the offender on community supervision or juvenile probation, imposes a fine, or issues an order deferring adjudication. Tex. Code Crim. Proc. art. 62.053. The numeric risk level of a particular offender is determined using a screening tool adopted by the TDCJ Risk Assessment Review Committee. The tool provides the following three risk levels:

- Level one (low): the person poses a low danger to the community and will not likely engage in criminal sexual conduct.
- Level two (moderate): the person poses a moderate danger to the community and might continue to engage in criminal sexual conduct.
- Level three (high): the person poses a serious danger to the community and will continue to engage in criminal sexual conduct.

Tex. Code Crim. Proc. art. 62.007.

The TDCJ Risk Assessment Review Committee, TDCJ, TJJJ, or a court may override a risk level if it can document that the assessed risk level is not an accurate reflection of the risk the sex offender poses to the community. Tex. Code Crim. Proc. art. 62.007(d).

Must law enforcement agencies notify local school districts when a sex offender moves into the district?

Yes. A local law enforcement agency, after receiving registration information, must notify the superintendent of a school district in which a registered sex offender intends to reside, work, or attend school, in any of the following circumstances:

- the victim of the sex offense was at the time of the offense under 17 years old or a student of a public or private school;
- the sex offender is a public or private school student; or
- the sex offender was required to register based on a conviction, deferred adjudication, or an adjudication of delinquent conduct for the offense of sexual performance by a child or the offense of possession or promotion of child pornography.

Tex. Code Crim. Proc. arts. 62.053(e), .054, .055(f).

Notice may not be provided if the conviction or adjudication was for incest. Tex. Code Crim. Proc. art. 62.054(b). Notification to the school district must be provided by mail. Tex. Code Crim. Proc. art. 62.053(e).

Can a school disclose offender information provided in the school notification by law enforcement agencies to the public?

The Texas attorney general has ruled that, upon receipt of a written request, a school administrator may only release information to the public about a sex offender that was provided to the administrator as part of the notice from a law enforcement agency if the information has been entered into the DPS database and that is considered public information. For example, a school may not release the following information to the general public about a sex offender, whether or not the offender is an adult or a juvenile:

- Social security number
- Driver's license number
- Telephone number (home, work, or cellular)
- Online identifiers
- Any information required by DPS that is not otherwise identified as public information
- Any information that would reveal the victim's identity.

Tex. Code Crim. Proc. art. 62.005(b); Tex. Att'y Gen. ORD-645 (1996).

Neither a school district official nor the general public is authorized to receive from local law enforcement authorities any sex offender registration information pertaining to individuals whose reportable convictions or adjudication occurred prior to September 1, 1970. Tex. Code Crim. Proc. art. 62.002(a).

What is considered public information about a registered sex offender?

The following information about an offender is considered public and may be obtained from the Texas Department of Public Safety (DPS) or may be located on the DPS sex offender registry website:

- Full name, date of birth, sex, race, height, weight, eye color, hair color, and shoe size;
- Address at which the person resides or intends to reside or, if the person does not reside or intend to reside at a physical address, a detailed description of each geographical location at which the person resides or intends to reside;
- Alias(es) used by the person;
- Numeric risk level assigned to the person;
- Photograph or electronic digital image of the person;
- Status regarding whether the person is discharged, paroled, or released on juvenile probation, community supervision, or mandatory supervision;
- Status regarding whether the person is or will be employed, carrying on a vocation, or a student at a particular public or private institution of higher education in this state or another state (and name and address of that institution); and
- Arrest warrant, and any affidavit presented to the magistrate in support of the issuance of the warrant.

Tex. Code Crim. Proc. art. 15.26, 62.005, .051.

Does the Texas Sex Offender Registration Program include child safety zones?

No, the Texas Sex Offender Registration Program outlined in Texas Code of Criminal Procedures chapter 62 does not address child safety zones for registered sex offenders.

However, other state statutes require the imposition of child safety zones on sex offenders of sex-related offenses against victims younger than 17 years of age. Tex. Gov't Code §§ 508.187, .225; Tex. Code Crim. Proc. art. 42A.453, .502.

Additionally, municipalities such as cities and towns are authorized to adopt ordinances restricting where a registered sex offender may live or to establish greater distances for child safety zones where sex offenders may go within the municipality. See Tex. Att’y Gen. Op. No. GA-526 (2007) (finding that a home-rule municipality could restrict where a registered sex offender may live). Although smaller cities with fewer than 5,000 residents, also known as general-law municipalities, faced past challenges in establishing residency restrictions on sex offenders, the Texas Legislature clarified their scope of authority in 2017 and granted them the ability to impose restrictions up to 1,000 feet on registered sex offenders from going in, on, or within a specified distance of a child safety zone in the municipality. Tex. Loc. Gov’t Code § 341.906(b), (d).

Grandfathering clause: General-law municipalities may not apply a new residency restriction ordinance to a registered sex offender who has established residency in a residence located within the specified distance of a child safety zone before the date the ordinance is adopted. Tex. Loc. Gov’t Code § 341.906(f).

What is a child safety zone?

A child safety zone is a condition of restriction on locations where offenders may go, as established by law. Child safety zones are either issued by a judge through court orders or designated by the Texas Board of Pardons and Paroles (BPP) as a condition of an offender’s release. Tex. Gov’t Code §§ 508.187, .225.

If an offender is subject to a child safety zone, the offender may not go in, on, or within a distance specified by the parole panel of premises where children commonly gather, including a school, day-care facility, playground, public or private youth center, public swimming pool, video arcade facility, or other facility that regularly holds events primarily for children. The offender also may not supervise or participate in athletic, civic, or cultural activities or programs that include participants or program recipients who are 17 or younger. Tex. Gov’t Code §§ 508.187(b), .225(a); Tex. Code Crim. Proc. art. 42A.453.

For the purpose of defining child safety zones, a premise includes real property and all buildings and appurtenances pertaining to the real property, and a school can be a private or public elementary or secondary school or a day-care center. Tex. Code Crim. Proc. art. 42A.453(a); Tex. Health & Safety Code § 481.134(a)(4).

The Texas BPP has adopted 500 feet from property line to property line as the default or standard distance for a child safety zone. BPP, *Board Policy: Designation of Standardized Distance for Child Safety Zones*, BPP-POL.145.205 (Jan. 19, 2017). The Texas Department of Criminal Justice (TDCJ) Parole Division (PD) enforces the guidelines established by the BPP against released offenders who are under supervision, and offenders are required to observe any greater distances than 500 feet that are established by municipal ordinances. TDCJ-PD, PD/POP-3.6.5 (Aug. 15, 2017).

For additional restrictions placed on sex offenders by the BPP, see [Texas Board of Pardons and Paroles board policy BPP-POL. 154.263.](#)

Who is subject to a child safety zone?

By law, a person who has committed an offense listed in Texas Government Code section 508.187(a), including indecency with a child and sexual assault, against a victim or alleged victim younger than 17 years old, is subject to child safety zone requirements as a condition of parole or release to mandatory supervision. Tex. Gov't Code § 508.187(b). In addition, the BPP may require a child safety zone for a person convicted or adjudicated of: criminal solicitation; murder; capital murder; aggravated kidnapping; trafficking of persons; indecency with a child; sexual assault; aggravated sexual assault; certain injuries to a child; aggravated robbery; certain burglaries; compelling prostitution; sexual performance by a child; use of a child to commit certain offenses; or certain controlled substance violations. Tex. Gov't Code § 508.225; Tex. Code Crim. Proc. art. 42A.054(a).

Are there exceptions to child safety zones?

Yes. Notwithstanding an applicable child safety zone that is required by law, ordered by the court, or designated by the parole panel, a sex offender may go immediately to or from certain locations, including a parole office, residential facilities and rehabilitative services to which the individual is assigned, or other locations authorized by the parole division as places where it is reasonable and necessary for the individual to be present for legitimate business, including a workplace, health care facility, or place of worship. Tex. Gov't Code §§ 508.187(b-1), .225(a-1). The BPP considers daily living needs reasonable and necessary to allow an offender to travel through and into child safety zones, including but not limited to grocery stores, banks, post offices, barbershops or hair salons, and gas stations. TDCJ-PD, PD/POP-3.6.5 (Aug. 15, 2017).

The Texas BPP also allows a supervising parole officer to affirmatively grant the offender permission to enter the child safety zone on an event-by-event basis under certain circumstances. Tex. Gov't Code § 508.187(e).

For general-law municipalities, a registered sex offender may raise an affirmative defense to local ordinance restrictions if the registered sex offender was in, on, or within a specified distance of a child safety zone for a legitimate purpose, including transportation of a child that the registered sex offender is legally permitted to be with. Tex. Loc. Gov't Code § 341.906(c).

Finally, a registered sex offender may petition the parole panel to modify a child safety zone if the restriction interferes with the releasee's ability to attend school or hold a job and consequently constitutes an undue hardship for the releasee, or if the restriction is broader than necessary to protect the public, given the nature and circumstances of the offense. Tex. Gov't Code § 508.187(d).

How will a school district know whether a sex offender is subject to a child safety zone?

The designation of a child safety zone is not tied to the sex offender registry. To determine if a sex offender is subject to a child safety zone, a district must either see the offender's court order or the sex offender must inform the district of this restriction.

NON-STUDENT SEX OFFENDERS

How will a school district know when a sex offender is attempting to enter school premises?

School districts are authorized to require a person entering a district campus to display the person's driver's license or another form of government-issued identification containing the person's photograph. Tex. Educ. Code § 38.022(a). A district can establish an electronic database of campus visitor information and verify whether a campus visitor is a sex offender using a computerized central database maintained by DPS or another source acceptable to the district. Tex. Educ. Code § 38.022(c).

Additionally, sex offenders who enter a school's premises during the school's standard operating hours are required to notify the administrative office of the school about the offender's presence and registration status. Tex. Code Crim. Proc. art. 62.065(b). Premises subject to this notification requirement by a sex offender include a building or portion of a building and the grounds on which the building is located, including any public or private driveway, street, sidewalk or walkway, parking lot, or parking garage on the grounds. Tex. Code Crim. Proc. art. 62.065(a)(1).

This reporting notice does not apply to student sex offenders who are enrolled at the school district, to student sex offenders enrolled at other schools who are arriving to participate at an event at the school, or to a person who has entered into a written agreement with the school that exempts the person from this reporting requirement. Tex. Code Crim. Proc. art. 62.065(c).

What should a school administration do when a visitor is identified as a sex offender?

A school board is required to adopt a policy regarding the actions a school campus should take when a visitor is identified as a sex offender. Tex. Educ. Code § 38.022(d). The office may provide a chaperon to accompany the registered offender while the offender is on the premises of the school. Tex. Code Crim. Proc. art. 62.065(b); TASB Policy GKC(LEGAL).

Absent notice from law enforcement or from an offender required to self-report, how may a district determine whether an individual who has reason or otherwise attempts to come on campus is a registered sex offender?

A district may ask an individual attempting to enter school premises to provide information necessary for a mandatory or permissive criminal history review. Tex. Educ. Code § 38.022.

May a district prohibit a sex offender from visiting campus?

In general, a school administrator, school resource officer, or school district peace officer of a school district may refuse to allow any person to enter on or may eject any person from property under the district's control if the person refuses to leave peaceably on request and the person poses a substantial risk of harm to any person. Tex. Educ. Code § 37.105; TASB Policy GKA(LEGAL).

A sex offender who is not a parent as defined under state or federal law and who does not have any legitimate business to be present on campus may be restricted from coming on campus by a child safety zone or other laws. Child safety zones are discussed at Texas Sex Offender Registry, above.

Does a parent of a district student have a right to come onto campus, even if the parent is a registered sex offender?

The answer depends on the circumstances. In general, parents have a legal right of access to their children at school. Absent legally altered rights, Texas Education Code chapter 26 encourages parents to actively participate in creating and implementing educational programs for their children. Tex. Educ. Code § 26.001(a).

However, a district may impose reasonable restrictions to maintain order and ensure the safety of other students. See *Lovern v. Edwards*, 190 F.3d 648 (4th Cir. 1999) (rejecting claim that school officials must allow parents boundless access school property); *Rodgers v. Duncanville Indep. Sch. Dist.*, 2005 WL 770712 (N.D. Tex. Apr. 5, 2005) (rejecting argument that parent had right of access to school after administrators banned parent from campus for repeatedly ignoring the administration's directives). As mentioned, a district may also be required to comply with a court order that curtails a parent's rights to a child.

A school district can prepare for such situations by adopting district-wide policies and administrative procedures that provide guidance to the district. As discussed above, the board of trustees is required to adopt a policy regarding the action to be taken by campus administration if a visitor is identified as a sex offender. Tex. Educ. Code § 38.022(d). In most districts, boards have directed their superintendents through the district's policy GKC(LOCAL) to work with the administration at each campus to develop and implement procedures that address:

- parental rights;
- escort by district personnel;
- access to common areas of the campus;
- access to classrooms;
- drop off and release of students;
- eligibility to serve as volunteers; and
- any other relevant issues.

TASB Policy GKC(LOCAL).

For example, subject to any known court-ordered restrictions, a district might allow the parent to come onto campus to eat lunch with his or her child, or to participate in a meeting about the child, but have an administrator monitor the visit. Another option would be to let the parent eat lunch with his or her child in the school’s library or another location where other students are not present but a staff member can monitor the visit.

A registered sex offender parent’s requests should be carefully reviewed on a case-by-case assessment so that relevant and up-to-date information can be evaluated prior to denying or granting access to a child or entry to school premises.

Furthermore, recall that a student sex offender enrolled at the school district or enrolled at other schools who are arriving to participate at an event at the school, is not required to inform the receiving campus that he or she is a registered sex offender. Tex. Code Crim. Proc. art. 62.065(c)(2). Therefore, it would be appropriate for a school district to consider in its policy any other actions, if different, to be taken by campus administration if a student who wishes to enter a school premise to participate in educational activities is identified as a sex offender.

Can a registered sex offender attend a school board meeting?

Any regular, special, or called meeting of a governmental body, such as a public school district, is open to the public unless restricted by law. Tex. Gov’t Code § 551.002. There are no laws specifically barring registered sex offenders from attending meetings of governmental bodies. Additionally, Chapter 26 of the Texas Education Code grants a parent the right to complete access to any meeting of the board of trustees held in open session. Tex. Educ. Code § 26.007(a).

Discussed above at Texas Sex Offender Registry, Child Safety Zones are required by Texas Government code chapter 508 and may be required by local city ordinances. Whether or not a parent’s right to breach a child safety zone in order to partake in their educational rights as parents will depend on the facts of the circumstances and will likely involve interpretation of court orders and review of other legal documents.

Absent known court orders or specific circumstances, a member of the public—which includes a parent who is a registered sex offender—should be allowed to attend a school board meeting that is open to other members of the public without requiring advance written notice or permission.

May the district prohibit a sex offender from volunteering?

Yes, the district can keep a sex offender from volunteering if it desires. There is no legal right to volunteer at a school. A district can set requirements for eligibility to become a volunteer and may exclude sex offenders. In interpreting a person’s criminal history, the district can look to the type of offense, the seriousness of the offense, the volunteer position being sought, and the date of conviction. Sex offenders may also have restrictions placed on their ability to participate in any volunteer activities or volunteer any services unless there is written approval of the offender’s supervising officer before engaging in any volunteer activities. TDCJ-PD, PD/POP-3.6.2 (Sept. 1, 2017). The best advice is for districts to weigh all potential concerns and use common sense in making decisions based on a volunteer applicant’s past criminal history.

May the district run a criminal background check on individuals who come to a school campus polling site to vote and prohibit those who are known sex offenders from coming on campus?

No. Texas statutes specifically address conducting background checks on citizens who come on district campuses solely for the purpose of voting. In order to vote, a person is required to be a registered voter and present identification at the polling place. If a person comes onto district property to vote, election workers will check the qualifications and identification of these persons.

TASB Legal Services generally recommends that school districts leave these matters to the election workers, not to school employees. Because school districts are now required to address the security of polling locations in their multihazard emergency operations plans, schools can broadly assess the needs for securing their campuses during voting periods and plan accordingly. Tex. Educ. Code § 37.108(e). For example, school campuses concerned about safety while the campus is being used as a polling site may want to address the concern by strategically choosing the polling location. Logistically, a polling place requires a large, open, handicap-accessible space, so an ideal location would be an area on the outskirts of a campus away from students (e.g., auditorium, gym, or foyer) or at an administrative building. Ideally the site will be partitioned or closed off from the rest of campus so that voters will not be able to pass through the polling place and into the rest of the building without clearance through the district’s visitor screening process.

If a voter wants to stay on campus or enter another area of campus, the district employees can then run a background check as they would for any other campus visitor. The Secretary of State’s office has the authority to approve a form to be posted in polling places defining the boundaries of the polling place and notifying voters that they will be subject to security

measures if they proceed past the designated polling place. State law and many districts' local policies allow a district to obtain criminal history information of campus visitors by requiring a visitor to show his or her driver's license or using an electronic database to determine if the person is a sex offender. Tex. Educ. Code § 38.022; TASB Policies GKC(LEGAL) and (LOCAL).

EMPLOYMENT OF SEX OFFENDERS & CRIMINAL BACKGROUND CHECKS

Can a school district employ a person who is required to register as a sex offender?

No. A school district, open-enrollment charter school (OECS), or shared services arrangement (SSA) must discharge or refuse to hire an employee or applicant for employment if it obtains a CHRI review that the person has been convicted of or placed on deferred adjudication community supervision for an offense which the person is required to register as a sex offender under Code of Criminal Procedure chapter 62, or convicted of a Penal Code, Title 5, felony offense if the victim of the offense was under 18 years old at the time the offense was committed or an equivalent offense under the laws of another state or federal law. Tex. Educ. Code § 22.085(a).

STUDENT SEX OFFENDERS

How does a district know when a student is required to be registered as a sex offender?

Upon the earlier of either 24 hours or the next school day after a student's conviction, deferred prosecution, deferred adjudication, or adjudication of delinquent conduct for certain offenses, a prosecutor's office is required to orally notify the superintendent or designee in the enrolled student's district whether or not sex offender registration is required for that student. The prosecutor's office must then also provide a written notice within seven days of the oral notice. Tex. Code Crim. Proc. art. 15.27(b).

Likewise, a parole, probation, or community supervision office, including a community supervision and corrections department, a juvenile probation department, the paroles division of the TDCJ, and the TJJD, are required to also notify superintendents or designees whenever a student sex offender transfers from a school district, or is subsequently removed from a school district, and later returned to a school district other than the one the student was enrolled in. Tex. Code Crim. Proc. art. 15.27(c).

Upon the earlier of either 24 hours or the next school day after receiving such notices concerning a student sex offender, the superintendent must provide this notice to all instructional and support personnel who have regular contact with the student. Tex. Code Crim. Proc. art. 15.27(b), (c).

Are there consequences for failure to provide notice to school districts concerning an offender’s requirement to be registered as a sex offender?

Yes. If a law enforcement agency head or designee fails to provide school notification required by Texas Code of Criminal Procedure article 15.27, a superintendent or principal must report the failure to notify to the Texas Commission on Law Enforcement (TCOLE). Tex. Code Crim. Proc. art. 15.27(m).

If a prosecutor’s office fails to provide school notification, a juvenile court judge or juvenile board designee shall report the failure to notify to the elected prosecuting attorney responsible for the operation of the office. Tex. Code Crim. Proc. art. 15.27(n).

If a parole, probation, or community supervision department officer fails to provide the school notification, a supervisor must report the failure to the director of the entity employing the noncompliant officer. Tex. Code Crim. Proc. art. 15.27(o).

If the superintendent fails to provide the notification to all instructional and support personnel who have regular contact with the student, the board of trustees is required to report the failure to the State Board for Educator Certification. Tex. Code Crim. Proc. art. 15.27(l).

Can a district refuse to enroll a resident student because that student is required to register as a sex offender?

No. The district is required to admit all students over five years old and younger than 21 years old as of September 1 of the school year, as long as the students satisfy the conditions found in Texas Education Code section 25.001 and related statutes. Tex. Educ. Code § 25.001(a). See TASB Policy FD(LEGAL). The law does not have a specific exemption for student sex offenders but the district does have options regarding placement of the student sex offender while enrolled with the district.

Must the district remove a student sex offender from the regular classroom upon receiving notice that the student is required to register as a sex offender?

A district must remove a student who is required to register as a sex offender from the regular classroom to determine the appropriate placement upon receipt of notice under Texas Code of Criminal Procedure article 15.27 or Texas Code of Criminal Procedure chapter 62. Tex. Educ. Code §§ 37.302-.303. TASB Policy FOE(LEGAL).

Student sex offender under court supervision: If the student is under court supervision, the district must place the student in the appropriate alternative education program for at least one semester. Tex. Educ. Code § 37.304(a).

Student sex offender not under court supervision: If the student is not under court supervision, the district may place the student in the appropriate alternative education program for one semester or in the regular classroom. A district may not place the student in the regular classroom if the board or the board's designee determines that the student's presence in the regular classroom threatens the safety of other students or teachers, will be detrimental to the educational process, or is not in the best interests of the district's students. Tex. Educ. Code § 37.305.

Appropriate alternative education program: A student required to register as a sex offender must be placed in the disciplinary alternative education program (DAEP) unless a court orders the placement of the student in the juvenile justice alternative education program (JJAEP) or the district has a memorandum of understanding with the juvenile board that provides for the placement of students who are registered sex offenders in the JJAEP. Tex. Educ. Code § 37.309.

Placement review: At the end of the first semester of a student's placement, the board or the board's designee must convene a committee to review the placement. The committee must be composed of:

1. a classroom teacher from the student's home campus;
2. the student's parole or probation officer or, if the student does not have a parole or probation officer, a representative of the local juvenile probation department;
3. an instructor from the alternative education program to which the student is assigned;
4. a district designee selected by the board or designee; and
5. a school counselor employed by the district.

Tex. Educ. Code § 37.306(a).

The committee by majority vote must recommend to the board or designee whether the student should be returned to the regular classroom or remain in the alternative education program. If the committee recommends that the student be returned to the regular classroom, the board or designee must return the student to the regular classroom unless the board or designee determines that the student's presence in the regular classroom threatens the safety of other students or teachers, will be detrimental to the educational process, or is not in the best interests of the district's students. If the committee recommends that the student remain in the alternative education program, the board or designee must continue the student's placement in the alternative education program unless the board or designee determines that the student's presence in the regular classroom does not threaten the safety of other students or teachers, will not be detrimental to the educational process, and is not contrary to the best interests of the district's students. Tex. Educ. Code § 37.306(b)-(d).

If the board or designee determines that the student should remain in an alternative education program, the board or designee must reconvene the committee before the beginning of each school year to review the student's placement in an alternative education program. Tex. Educ. Code § 37.306(e).

Transfer student sex offenders: If a student under court supervision transfers during a mandatory placement, the receiving district may require the student to complete an additional semester in the appropriate alternative education program without reviewing the student's placement or count the time the student spent in the alternative placement at the prior district toward the mandatory placement requirement. Tex. Educ. Code § 37.304(b). A district must determine whether to place all other transfer students who are registered sex offenders in the appropriate alternative education program or in a regular classroom. A district must follow the required placement review procedures in making the determination. Tex. Educ. Code § 37.308.

Student sex offenders with disabilities: The placement of a student with a disability who receives special education services must be made in compliance with the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et seq. The review of the student's placement may be made only by a duly constituted admission, review, and dismissal (ARD) committee. The ARD committee may request that a board or designee convene a review committee to assist in conducting the review. Tex. Educ. Code § 37.307.

Appeals: A student or the student's parent or guardian may appeal a decision by a board or designee to place the student in an alternative education program by requesting a conference among the board or designee, the student's parent or guardian, and the student. The conference is limited to the factual question of whether the student is required to register as a sex offender under Chapter 62. If a board or designee determines at the conclusion of the conference that the student is required to register as a sex offender, the student is subject to placement in an alternative education program. The decision of a board or designee is final and may not be appealed. Tex. Educ. Code § 37.311.

Liability: The above provisions regarding placement of a student who is a registered sex offender do not waive any liability or immunity of the district or its officers or employees or create any liability for or a cause of action against the district or its officers or employees. Tex. Educ. Code § 37.312.

May the district include a notice that a student is required to register as a sex offender in that student's file?

Under Texas Education Code section 37.017, the written notice provided to a district under Texas Code of Criminal Procedure article 15.27 stating that a student is required to register as a sex offender may not be attached to the permanent academic file of the student who is the subject of the report. The district must destroy the information at the end of the academic year

in which the report was filed. Tex. Educ. Code § 37.017. Notice provided by a law enforcement agency under Texas Code of Criminal Procedure article 62.053 or article 62.055 is not subject to the Section 37.017 records retention procedures.

CONCLUSION

Not all individuals who have or who may victimize children are included in the sex offender registry. Nonetheless, school districts can take reasonable steps to improve overall campus safety for staff, students, and other volunteers and visitors at schools.

School districts should comply with all state and federal requirements related to the employment of school district employees and contractors and to the background screening of campus visitors and volunteers. Adopting additional guidelines regarding visitors and volunteers on campus and consistently enforcing rules can help schools manage risk. Minimum procedures should include a reliable screening system that properly identifies all visitors and contains timely and up-to-date criminal history database information, identifying what legitimate purpose(s) visitors seek to be present on school premises for, arranging for adequate staff supervision where needed, requiring visitors to adhere to all district and campus policies, reporting any concerning circumstances immediately, and calculating the presence of visitors and volunteers into emergency operation plans. When visitors threaten harm to the health and safety of students, school administrators should not hesitate to involve law enforcement.

District staff can also benefit from training to learn how to recognize potential sex offenders, signs of child grooming, indications that a child may be being abused, or how to seek help from law enforcement and community resources. Helpful guidance and training materials can be found online from organizations dedicated to the education and prevention of sexual violence and other crimes against children. A list of sample resources is located at the end of this article.

Last but not least, providing age-appropriate training for students can improve school climate and help children learn more about managing personal safety, reporting concerns to trusted adults, and helping other students speak up or ask for help.

Additional Resources:

TASB HR Services Resources

HR Services has helpful information in the *Recruiting and Hiring* section of its online Member Library. (Your district must be a member of HR Services and also have myTASB access.)

Texas Education Agency Resources

The commissioner of education provides further guidance on required fingerprinting and the Do Not Hire Registry at [TEA's Help Desk](#).

State Board for Educator Certification—Official Educator Certification Online Search

To determine an educator's certification status, you can conduct a name search on [SBEC's online search tool](#).

Texas Department of Public Safety Resources

Texas's [sex offender registry](#) is available on the Texas Department of Public Safety's (DPS) Website.

DPS also published FAQs on the [Texas Sex Offender Registration Program](#).

Texas Council on Sex Offender Treatment

The [Council on Sex Offender Treatment's](#) Website includes a number of resources regarding sex offenders

Texas Juvenile Justice Department

To learn more about the [Texas Juvenile Justice Department's](#) oversight of juvenile offenders, including student sex offenders

Texas Department of Criminal Justice

To learn more about child safety zones and sex offender program supervision [guidelines](#).

Federal Resources

The [Office for Sex Offender Sentencing, Monitor, Apprehending, Registering, and Tracking](#) includes several resources regarding sex offenders

The National Center for Missing and Exploited Children published a guidance entitled [Child Molesters: A Behavioral Analysis](#)

The [Dru Sjodin National Sex Offender Public Website](#)

Training Resources

There are many groups that provide education, training, and resources related to preventing sexual violence and crimes against children. Here are just a few to note:

[National Center for Missing and Exploited Children](#)

[Center for Sex Offender Management](#)

[Office of Juvenile Justice and Delinquency Prevention](#)

[Darkness to Light](#)

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Community/documents/protecting_schs_from_sex_offenders.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoollawesource.tasb.org.

This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is neither an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. It is important for the recipient to consult with the district's own attorney in order to apply these legal principles to specific fact situations.

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