

TEXAS DEPARTMENT OF PUBLIC SAFETY

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OPINION COMMITTEE

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February 15, 2006

RQ-0453-GA

Greg Abbott
Attorney General
Price Daniel, Sr. Building, 8th Floor
209 West 14th Street
Austin, Texas 78701

Re: Request for an Opinion regarding Art. 62.002(a), Tex. Code Crim. Proc.
as it relates to sex offenders convicted in other states.

Dear General Abbott:

The Texas Department of Public Safety ("Department") requests your formal opinion on the following question:

Does a sex offender with a reportable conviction based on an out-of-state conviction occurring before September 1, 1995, who was still under supervision in the other state on or after September 1, 1997, have a duty to register as a sex offender in Texas if the offender resides in Texas but was at no point under the supervision and control of a Texas-based penal institution, probation department, or parole office for the out-of-state conviction?

Article 62.002(a), Texas Code of Criminal Procedure, makes Chapter 62, Texas Code of Criminal Procedure, applicable to a "reportable conviction or adjudication occurring on or after September 1, 1970." Article 62.002(a), Texas Code of Criminal Procedure, is former Article 62.11(a), Texas Code of Criminal Procedure, which was deleted by Act of May 26, 2005, 79th Leg., R.S., ch. 1008, § 1.01, 2005 Tex. Gen. Laws 3412.

Chapter 62, Texas Code of Criminal Procedure, requires the Department to maintain a computerized central database containing all registration information a person required to register provides a local law enforcement authority. See *TEX. CODE CRIM. PROC. ANN.* art. 62.005(a) (Vernon Supp. 2005). The Department is authorized to enter an offender into this sex offender registration database if the offender has a duty to register.

A person with a "reportable conviction or adjudication" must register. See *id.* art. 62.051(a). A "reportable conviction or adjudication" includes a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), (E), or (G) of Article 62.001(5), Texas Code of Criminal Procedure. See *id.* art. 62.001(5)(H). The Department is responsible for determining whether an offense under the laws of another state contains elements substantially similar to the elements of an offense under the laws of this state. See *id.* art. 62.003(a).

Sex offense convictions from other states first became reportable convictions in 1995. See Act of May 16, 1995, 74th Leg., R.S. ch. 258 §§ 1, 8, 1995 Tex. Gen. Laws 2197, 2202; and *TEX. REV. CIV. STAT. ANN.* art. 6252-13c.1, sec. 1(5)(I) (Vernon Supp. 1995) ("Reportable conviction or adjudication" means a conviction under the laws of another state for an offense containing elements that are substantially similar to the elements of an offense listed under Paragraph (A), (B), (C), (D), or (F) of this subdivision.") At that time, section 8(a) of article 6252-13c.1, Revised Statutes, governed applicability. Section 8(a)(1)(C) made registration applicable to an offender convicted of a sex offense in another state if the offender's reportable conviction occurred on or after September 1, 1995. See *id.* art. 6252-13c.1, sec. 8(a)(1)(C) ("This article applies only to a reportable conviction or adjudication occurring on or after September 1, 1995, if the conviction is for an offense described under Section 1(5) . . . (I) . . . , of this article.")

In 1997, the legislature redesignated article 6252-13c.1, Revised Statutes, as Chapter 62, Texas Code of Criminal Procedure, and amended Chapter 62. Section 8(a) of article 6252-13c.1, Revised Statutes, was redesignated as Article 62.11, Texas Code of Criminal Procedure, and amended to provide, "[t]his chapter applies only to a reportable conviction or adjudication occurring on or after September 1, 1970 . . ." See Act of June 1, 1997, 75th Leg., R.S., ch. 668, § 1, 1997 Tex. Gen. Laws 2260. This amendment made the registration requirement retroactive to a person with a reportable conviction or adjudication occurring on or after September 1, 1970. However, this retroactive law applied to a sex offender convicted on or after September 1, 1970 only if the offender was still under state supervision for the sex offense on or after September 1, 1997. See *id.* § 11, 1997 Tex. Gen. Laws 2264. Section 11(a) of Act of June 1, 1997, 75th Leg., R.S., ch. 668 (hereinafter referred to as Section 11) provides:

(a) The change in law made by this Act to Article 62.11, Code of Criminal Procedure, as redesignated and amended by this Act (formerly subsection (a), Section 8, Article 6252-13c.1, Revised Statutes), applies only to a defendant who, with respect to an offense listed in Subdivision (5), Article 62.01, Code of Criminal Procedure, as redesignated and amended by this Act (formerly Subdivision (5), Section 1, Article 6252-13c.1, Revised Statutes), on or after [September 1, 1997]:

(1) is confined in a penal institution, as that term is defined by Subdivision (3), Article 62.01, Code of Criminal Procedure, as

redesignated and amended by this Act (formerly Subdivision (3), Section 1, Article 6252-13c.1, Revised Statutes); or

- (2) is under the supervision and control of a juvenile probation office or an agency or entity operating under contract with a juvenile probation office, a community supervision and corrections department, or the pardons and paroles division of the Texas Department of Criminal Justice.¹

Section 11(b) saves Section 8(a), Article 6252-13c.1, Revised Statutes, for offenders who were not, as of September 1, 1997, under the supervision and control of an entity described by Section 11(a)(1) or (2). Section 11(b) provides:

- (b) A defendant who, on the effective date of this Act, is not described by Subdivision (1) or (2) of Subsection (a) of this section is covered by the law in effect under Subsection (a), Section 8, Article 6252-13c.1, Revised Statutes, before that section was redesignated and amended by this Act, and the former law is continued in effect for that purpose.

The language in Section 11(a) and Section 11(b) limiting application of Article 62.11 was omitted when Article 62.11 was deleted. However, Section 4.01(a) of the 2005 Act provides that:

Except as provided by Subsection (b) of this section, the changes in law made by this Act in amending Chapter 62, Code of Criminal Procedure, apply to a person subject to Chapter 62, Code of Criminal Procedure for an offense or conduct committed or engaged in before, on, or after the effective date of this Act.²

Local law enforcement authorities submit registrations to the Department concerning sex offenders with a reportable conviction³ that is based on a conviction in another state occurring before September 1, 1995 who discharged their incarceration, probation, and/or parole after September 1, 1997. These offenders were under state supervision for the sex offense on and after September 1, 1997. However, their entire incarceration, probation, and/or parole was served under the supervision and control of an entity in the convicting state. Upon release, these offenders moved to Texas. Section 11(a)(1) and (2) does not specifically list penal institutions, parole offices, and probation departments in other states. Rather, Section 11(a)(1) and (2) describes Texas based penal institutions, parole offices, and probation departments. A strict interpretation leads to the conclusion that the 1997 amendment to Article 62.11, Texas Code of Criminal Procedure, does not make registration retroactive to an offender convicted of a sex offense in another state before September 1, 1995 and discharged on or after September 1, 1997 when that offender was never under the supervision and

¹ Act of May 29, 1999, 76th Leg., R.S., ch. 1415, § 26, 1999 Tex. Gen. Laws 4841-2 added the Texas Youth Commission to Section 11(a)(2) of Act of June 1, 1997, 75th Leg., R.S., ch. 668.

² Act of May 26, 2005, 79th Leg., R.S., ch. 1008, §4.01, 2005 Tex. Gen. Laws 3424.

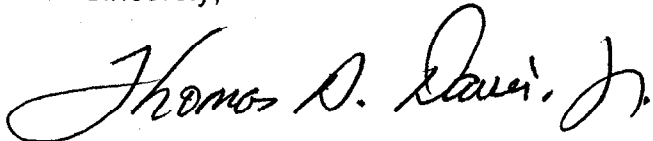
³ In these cases, the Department has already decided that these offenders were convicted of an offense containing elements substantially similar to the elements of a Texas sex offense that requires registration.

control of a Texas based penal institution, probation office, or parole department for that sex offense.

This strict interpretation leads to questionable results. For example, a sex offender convicted in Texas at a time when the law did not require the offender to register must register if the offender was still incarcerated or on probation or parole in Texas on or after September 1, 1997. Whereas, an offender convicted in another state of a substantially similar offense at the same time who was under state supervision on or after September 1, 1997 but never under the supervision and control of a Texas based penal institution, probation department, or parole office will not have to register if that offender resides in Texas.

Based on the preceding discussion, the Department respectfully requests an opinion as to whether these sex offenders from other states have a duty to register in Texas thereby authorizing the Department to enter them into the Department's sex offender database.

Sincerely,

A handwritten signature in cursive script that reads "Thomas A. Davis, Jr." The signature is written in black ink and is positioned above the typed name.

Thomas A. Davis, Jr.
Director