

TEXAS LAWYER

ANALYSIS

Public or non-public registration as a sex offender?

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According to [SafeHome.org](https://www.safehome.org), “Texas has the largest list of registered sex offenders in 2023, with over 100,000 individuals; California follows, with about 62,000.”

Pursuant to [Tex. Code Crim. Proc. Ann. Art. 62.352\(a\) and \(b\)](#), a defendant may be required to register on either a public sex offenders list or a nonpublic sex offenders list. The difference is that the public list is available to the general public, while the nonpublic list is only available to certain government agencies

and officials. Many believe that posting to the public list may be detrimental to the offender's ability to find a place to live or a job. Others believe that registration on the public list is crucial as a deterrent to the offender and to protect the community.

A young man, born in 2004, was adjudicated as a delinquent in 2019 as a result of being found guilty of multiple offenses. Those offenses included indecency with a child by contact as well as aggravated sexual assault of a child. In the recent case of [In Re B.K.A.](#), the Texas Court of Appeals grappled with the question of whether such an offender should be required to register on a [sex offenders list](#) publicly or non-publicly.

In 2019, that juvenile defendant, Billy, was placed on probation for two years. The trial court deferred a decision on whether Billy should be required to register as a sex offender until after he had the opportunity to submit to and complete a sex-offender treatment program pursuant to the conditions of his probation. Two years later, in 2021, the State of Texas sought to modify the terms of Billy's probation. The reason for the modification was that the State was advised by Billy's counselor that Billy was unlikely to have a sufficient amount of time to complete his treatment protocol before the term of probation ended. The State asked that the term of probation for Billy be extended to his 18th birthday. The trial court granted the motion. Prior to reaching the age of 18, Billy again found himself the subject of a State request that the terms of his probation be modified, such that in May, 2022, Billy was transferred to a different treatment provider. At that time, the State sought rulings that Billy register non-publicly as a sex offender. No opposition was raised to the State's motion. When Billy completed the terms of his probation, the State sought additional orders, again seeking orders requiring Billy to register non-

publicly as a sex offender. Billy responded to that motion, asking that he be exempted from the requirement to register non-publicly. The basis of his response was his contention that he completed sex offender treatment as ordered, and therefore, should not have his name posted to the public list. A hearing was held as a result of Billy's opposition to the motion, at which several witnesses appeared. Following a hearing at which those witnesses testified, the trial court ordered that Billy be required to register publicly as a sex offender. Billy appealed the trial court ruling.

At the hearing, Billy's juvenile probation officer offered testimony regarding Billy's deviant sexual fantasies. The probation officer testified that a person who continued to have sexually deviant fantasies, even after completing sex offender treatment, should be required to register on a public sex offender list.

The rationale for requiring a defendant to register on a public sex offenders list is to provide information to the public about the presence of sex offenders in their community and to help prevent future crimes. This information can be used by parents, schools, and other organizations to take appropriate precautions to protect themselves and their children. By contrast, the rationale for requiring a defendant to register on a nonpublic sex offender list is to protect the privacy of the defendant and to discourage vigilante justice. The nonpublic list is available to certain governmental agencies who have a legitimate need for the information, including law enforcement agencies and probation officers. Billy did not contest engaging in inappropriate behavior. Research indicates as to [child allegations of sexual abuse](#) that: "(a) the vast majority of allegations are true but (b) false allegations do occur at some non-negligible rate."

In Texas, the requirements for a defendant to be registered on a public sex offenders list are outlined in the [Texas Sex Offender Registration Program](#), which is a sex offender and public notification law that is designed to protect the public from sex offenders. Certain offenses require registration as a sex offender in Texas, including: sexual assault, sexual performance by a child, sexual assault of a child, continuous sexual assault of a child, aggravated sexual assault, indecency by contact, indecency by exposure, unlawful restraint, burglary, kidnapping, or aggravated kidnapping for sexual purposes, trafficking, compelling prostitution, online solicitation of a minor, attempt, conspiracy of solicitation of the foregoing offenses.

In Billy's case, he argued that he should not be required to register on the public list. The trial court heard from five witnesses who had interacted with Billy, including Dr. Shelly Graham, who conducted a psychosexual evaluation of Billy in April, 2022; Melody LeVane, a therapist at Brookhaven Youth Ranch, the facility where Billy received initial treatment; Terry Werner, of Pegasus Schools, the second facility where Billy engaged in treatment; Annette Robbins, the probation supervision officer for the juvenile probation division in Burnet County; and, Rafael Tovar, a DFPS caseworker who had worked with Billy toward the end of the term of Billy's probation.

In addition, the psychosocial evaluation included background information, detailing that:

- Billy, when 14, sexually assaulted his sister and other family members.

- The victim reported that the abuse began when his sister was 4 and Billy was 5.
- When Billy presented at Brookhaven, he had four (4) charges for sexual assault.
- Billy acknowledged engaging in sexual acts with his sisters and cousins starting when he was 5 or 6, and that these encounters continued until he was 14.
- The acts included intercourse and sexual touching.
- While Billy engaged in sexual acts primarily with female relatives, he also engaged in similar activities with male cousins.

The sexual deviancy was not the only issue Billy presented with at Brookhaven. [He had a history of:](#)

fighting, trespassing, starting fires, sexual deviance, hurting animals, and engaging in sexual acts with an animal. He had a history of neglect and ‘anger outbursts,’ had made ‘threats of self -harm’ when he was younger, and had received diagnoses of schizophrenia, psychotic disorder, and conduct disorder.

While at Brookhaven, Billy’s record indicated that he made sexual advances toward peers and other rule violations, including theft. There were some favorable observations in his record as well. His assessment noted that he had healthy attitudes about sex and above average intellect. The report nonetheless concluded that Billy was “high risk for recidivism of sexual offending and other behaviour.” Billy had scored high on scales that seek to show a propensity for violence and

recidivism on the tests he had been administered. A Brookhaven therapist noted that when he was new to the facility, [Billy admitted that:](#)

... he had groomed three children for sexual activities, physically forced one child into sexual activity, found child pornography, had sex with an animal, masturbated in public on numerous occasions, had sexual contact with someone who was sleeping on two occasions, tortured animals approximately 30 times by hitting them, sexually fondled a friend who fondled him in return, and regularly fantasized and masturbated to thoughts of his victims.

[At Pegasus](#), Billy's behavior improved. However, he made certain disclosures during treatment that provoked concern, such as "having deviant sexual fantasies of ... one of his victims" as well as "having deviant sexual fantasies of raping one of the Pegasus staff members while his peers at Pegasus were onlooking and cheering him on."

A witness from Pegasus testified that Billy displayed remorse for his actions, but that he had continued to have deviant thoughts, notwithstanding engaging in treatment for approximately four years.

Billy's caseworker indicated that a sex offender registration would serve to bar Billy from being able to engage in supervised extended living programs, whether the registration was public or nonpublic. The caseworker opined that the registration would not serve Billy's best interests, be the registration public or nonpublic, adding that there were protective orders in place prohibiting Billy from having contact with any of his victims until 2042.

After weighing all the testimony, the trial court concluded that Billy should be required to register on the public sex offender list. The Court of Appeals affirmed the trial court decision. The appellate court agreed with the trial court; Billy's history merited public sex offender registration to protect public safety, to prevent future crimes, to help law enforcement keep track of and to monitor Billy, and as an avenue of continuing to hold Billy accountable for his past actions. Lesson learned: be careful what you ask for. Billy had the opportunity to have his name posted to the nonpublic list of sex offenders. Billy had every right to challenge that recommendation. He lost that challenge, as the State pursued its right and duty to assure that the public is protected by alerting others to Billy's status.

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