

# Avoiding Sex Offender Registration

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# What this talk will cover:

- Everything you ever wanted to know about juvenile sex offender registration
- Everything you ever wanted to know about preventing your juvenile client from having to register as a sex offender
- What you should do if the court orders your client to register as a sex offender

# What this talk will not cover:

- Trial strategy
- Challenging forensic interviews
- Cross-examining child witnesses
- Confrontation issues
- Statements made in treatment used as basis for new charges

# Typical juvenile sex offenses

- Factually consensual (“Romeo and Juliet”)
- Use of force or threat of force
- Multiple offenders with one victim
- Large age spread between juvenile and victim

# What do judges believe about juvenile sex offenders?

- That they are pedophiles (or will be soon)
- That they cannot be treated in the community
- That they must be placed in DOC in order to protect the public
- That they must be registered as sex offenders in order to protect the public
- That any harm caused to them by registration is outweighed by the increased protection of the public

# What do we know about juvenile sex offenders?

- Adolescent sex offenders are considered more responsive to treatment than adult sex offenders and typically do not continue re-offending into adulthood
- Adolescent sex offenders have fewer numbers of victims and engage in less serious and aggressive behaviors
- Most adolescents do not have deviant sexual arousal

# What do we know about juvenile sex offenders?

- Most adolescents do not meet the criteria for pedophilia
- Adolescent sex offenders rates for sexual re-offenses (5-14%) are substantially less than their rates of recidivism for other delinquent behavior.

# Registration and Recidivism

- Michael F. Caldwell, *Sex Offender Registration and Recidivism Risk in Juvenile Sexual Offenders*, 27 BEHAVIORAL SCIENCES AND THE LAW 941, (2009).
- This article provides a solid background of the Sex Offender Registration and Notification Act (SORNA) and its intended purpose to reduce sexual violence.
- The authors cite several studies that have demonstrated that **registration of juvenile sex offenders does not lower recidivism rates**. Additionally studies are highlighted that suggest that SORNA may in fact lead to increased recidivism due to the fact that registration leads to many barriers to re-integration into the community.

# I just can't get enough of this stuff...

- The Massachusetts Youth Advocacy Department website has a great bibliography of current juvenile sex offender literature:  
<http://www.youthadvocacydepartment.org/jdn/resourcedocs/juvenile-sex-offender-annotated-bibliography.pdf>  
That website is a great resource for other topics as well:  
<http://www.youthadvocacydepartment.org/jdn/jdn-resources.html>
- Additional information about adolescent sex offenders is available from the National Center on Sexual Behavior of Youth.  
[www.ncsby.org](http://www.ncsby.org)

# **Mandatory v. Discretionary Registration & Staying Registration**



## Discretionary Registration under Wis. Stat. § 938.34(15m)

- The court may require a juvenile to comply with reporting requirements if the juvenile is adjudicated delinquent for certain crimes if
  - the court determines that the crime was sexually motivated, and
  - it would be in the interest of public protection to have the juvenile report

# List of crimes for which juvenile court may order sex offender registration:

- Delinquency finding based on violation, solicitation, conspiracy, or attempt to commit any violation of:
  - Ch. 940 (life and bodily security)
  - Ch. 944 (sexual morality)
  - Ch. 948 (crimes against children)
  - § 942.08 or 942.09 (invasion of privacy or depictions of nudity)
  - §§ 943.01 - 943.15 (damage and trespass)

# Required Sex Offender Registration

## Wis. Stat. § 301.45

- (1g) Who is covered. A person shall comply with the reporting requirements under this section if he or she meets one or more of the following criteria:
  - (a) Is adjudicated delinquent for a sex offense
  - (bm) Is in a juvenile correctional facility for a sex offense
  - (c) Is found not guilty due to NGI for a sex offense

\*There are other statutory criteria not listed here\*

# What is a “sex offense?”

- 1<sup>st</sup> degree sexual assault
- 2<sup>nd</sup> degree sexual assault
- 3<sup>rd</sup> degree sexual assault
- Incest
- 1<sup>st</sup> degree sexual assault of a child
- 2<sup>nd</sup> degree sexual assault of a child
- Repeated sexual assault of a child
- Sexual exploitation of a child
- Child trafficking
- Exposing a child to harmful materials
- Possession of child pornography
- False imprisonment or kidnapping

# What does registration entail?

- Wis. Stat. § 301.45 lays out requirements
- Failure to comply with sex offender registration requirements is a class H felony.
- A juvenile remains on the registration for 15 years from the date of disposition. Wis. Stat. § 301.45(5)(a)4. If the juvenile was placed in corrections, the 15 years is calculated from the time of discharge. Wis. Stat. § 301.45(5)(a)2.
- The juvenile court can order a juvenile to register for a lifetime. Wis. Stat. § 301.45(5)(b)3.

# How do I protect my client from having to register as a sex offender?

- Exception to reporting requirement under Wis. Stat. § 301.45(1m)
- Stay of sex offender registration under Wis. Stat. § 938.34(16)

# Exception to Registration Requirement

## Wis. Stat. § 301.45(1m)

- A person is not required to register if ALL of the following apply:
  - The violation did not involve sexual intercourse, either by the use or threat of force or violence or with a victim under 12
  - At the time of the violation, the person was under 19 and was not more than 4 years older or younger than the child
  - It is not necessary, in the interest of public protection, to require the person to comply with the reporting requirements.

# What do I do if I think my client fits the exceptions?

- Wis. Stat. § 301.45(1m)(b) allows a person to move the court to make a determination of whether the person satisfies the criteria in § 301.45(1m)(a).
- If a motion is filed, the court “shall” hold a hearing. Wis. Stat. § 301.45(1m)(bm).

# Evaluation by Expert

- Before deciding the motion, the court may request the person to be examined by a physician, psychologist, or other expert approved by the court. § 301.45(1m)(d).
- The report shall contain an opinion regarding whether it would be in the interest of public protection to have the person register under this section and the basis for that opinion.

# Hearing on the motion

- At the hearing, the juvenile has the burden of proving by clear and convincing evidence that he or she satisfies the criteria for exemption. The court may consider any of the following factors:
  - Ages of the juvenile and the child
  - The relationship between the person and the child
  - Whether the violation resulted in bodily harm
  - Whether the child suffers from a mental illness or deficiency
  - The probability that the person will commit other violations in the future
  - The report of the examination
  - Any other factor that the court determines may be relevant

## Stay of Sex Offender Registration

***State v. Cesar G.*, 2004 WI 61, 272 Wis. 2d 22**

- Wis. Stat. § 938.34(16) allows the court to stay any of the dispositions outlined in § 938.34, including sex offender registration.
- When a juvenile court enters an order mandating registration and also enters an order staying registration, the stayed registration requirement never goes into effect if the juvenile successfully completes the dispositional order.

# A bit about Cesar G.

- Cesar was 12 at the time of the offense
- The victim was also 12
- Cesar and another boy held her down and grabbed her breasts
- The other boy pulled her pants and underwear down and Cesar put his fingers in her vagina
- Cesar testified that he grabbed the victim to help her get away and that he never touched her sexually

## Factors the court should use in deciding whether to stay registration (§ 938.34(15m)(c))

- The seriousness of the offense
- The ages of the juvenile and the victim at the time of the violation
- The relationship between the juvenile and the victim
- Whether the violation resulted in bodily harm (physical pain or injury, illness, or any impairment of physical condition)

# Considerations, continued...

- Whether the victim suffered from a mental illness or mental deficiency that rendered him or her incapable of understanding or evaluating the consequences of his or her actions
- The probability that the juvenile will commit other violations in the future
- Any other factor that the court determines may be relevant to the particular case.

# How do I request a stay of registration?

- In jurisdictions where it is not “automatic,” negotiate it as part of a plea deal.
- File a written motion explaining the factors the court should consider.
- If client will be receiving sex offender treatment, ask for stay with review hearing upon completion of treatment.

## In re D.B., 2011 Ohio 2671

- “When an adult engages in sexual conduct with a child under the age of 13, it is clear which party is the offender and which is the victim. But when two children under the age of 13 engage in sexual conduct with each other, each child is both an offender and a victim, and the distinction between those two terms breaks down.”

# What if the court orders my client to register as a sex offender?

- Appeal

# Please stay in touch...

- Staff can sign up for the juvenile listserv
- Private bar attorneys can contact our juvenile liaison Diane Rondini-Harness at (414) 266-1200 or [rondinid@opd.wi.gov](mailto:rondinid@opd.wi.gov)
- Call or e-mail us with questions, complaints, news, or requests for training