

Chapter 82

Failure to Comply with Registration Requirements

CPJC 82.1 Failure to Comply Generally

Texas Code of Criminal Procedure article 62.102 sets out the offense as follows: “A person commits an offense if the person is required to register and fails to comply with any requirement of this chapter.”

The requirements are spread throughout articles 62.051 through 62.065, although the most popular failures appear to involve the failure to notify authorities of the intent to reside in a municipality, article 62.051(a), (f), and of an intended or completed move, article 62.055(a). The offense level is determined by the scope of the offender’s duty to register—its duration under article 62.101 and its frequency under article 62.058. Tex. Code Crim. Proc. art. 62.102(b).

The Elements. In *Crabtree v. State*, 389 S.W.3d 820 (Tex. Crim. App. 2012), the court examined the overall scheme and broke down the statutory language using the duties and definitions in chapter 62. As stated above, the article 62.102(a) appears to have two elements: (1) required to register, and (2) fails to comply with any requirement of chapter 62. A person must register when he has “a reportable conviction or adjudication.” Tex. Code Crim. Proc. art. 62.051(a). “Reportable conviction or adjudication” is defined to include numerous listed Texas offenses (some qualified) and some violations of extrajurisdictional laws “containing elements that are substantially similar to the elements” of some listed Texas offenses. Tex. Code Crim. Proc. art. 62.001(5).

Mental States *Crabtree’s* list of elements omits any requisite mental state(s). It is not clear one is required by due process, but the court of criminal appeals requires one.

The argument for a due process requirement is based on *Lambert v. California*, 355 U.S. 225 (1957), in which the Supreme Court struck a Los Angeles Municipal Code section that made it unlawful for felons to be or remain in Los Angeles for specified periods of time without registering with the chief of police. *Lambert*, 355 U.S. at 226. The question was “whether a registration act of this character violates due process where it is applied to a person who has no actual knowledge of his duty to register, and where no showing is made of the probability of such knowledge.” *Lambert*, 355 U.S. at 227. The court held it did. Although “[r]egistration laws are common and their range is wide[,]” this one criminalized the “mere failure to register” when “circumstances which might move one to inquire as to the necessity of registration are completely lacking.” *Lambert*, 355 U.S. at 229. “Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process.” *Lambert*, 355 U.S. at 229–30.

The argument against due process requiring a mental state is based on distinguishing *Lambert*, as the Supreme Court has in other contexts. See *United States v. International Minerals & Chemical Corp.*, 402 U.S. 558, 565 (1971) (upholding lack of knowledge of the regulations governing the shipment of dangerous materials like acid. “[W]here . . . dangerous or deleterious devices or products or obnoxious waste materials are involved, the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them must be presumed to be aware of the regulation.”); *U.S. v. Freed*, 401 U.S. 601, 609 (1971) (upholding the lack of scienter requirement for the unregistered status of knowingly possessed hand grenades, calling the statute “a regulatory measure in the interest of the public safety, which may well be premised on the theory that one would hardly be surprised to learn that possession of hand grenades is not an innocent act”). This reasoning also predated *Lambert*. See *U.S. v. Balint*, 258 U.S. 250, 254 (1922) (“Congress weighed the possible injustice of subjecting an innocent seller to a penalty against the evil of exposing innocent purchasers to danger from the drug, and concluded that the latter was the result preferably to be avoided. Doubtless considerations as to the opportunity of the seller to find out the fact and the difficulty of proof of knowledge contributed to this conclusion.”). The unique nature of sex offenses and the rate of recidivism led some courts to reject *Lambert*’s application to failure-to-register offenses. See *Connecticut Department of Public Safety v. Doe*, 538 U.S. 1, 4 (2003); see also, e.g., *State v. Bryant*, 614 S.E.2d 479, 488 (N.C. 2005) (“[A]s all fifty states and the District of Columbia had enacted sex offender registration programs in compliance with federal law by 1996, . . . it would be nonsensical to allow sex offenders to escape their duty to register by moving to a state that has not provided them with actual notice of their duty to register, and then claim ignorance of the law.”); *Kentucky v. McBride*, 281 S.W.3d 799, 804–06 (Ky. 2009), as modified (Apr. 27, 2009) (citing *Bryant*’s analysis with approval and holding its registration scheme dispenses with any requirement that the sex offender be given notice of his duty to register). Others have applied *Lambert* with little analysis. See *State v. Latimore*, 723 S.E.2d 589, 591 (S.C. 2012); *Garrison v. State*, 950 So. 2d 990, 993–94 (Miss. 2006); *State v. Giorgetti*, 868 So. 2d 512, 520 (Fla. 2004).

Texas law requires a mental state. In *Robinson v. State*, the court of criminal appeals addressed the absence of a mental state and any indication that none was required. *Robinson v. State*, 466 S.W.3d 166, 170 (Tex. Crim. App. 2015) (citing Tex. Penal Code § 6.02). It concluded that “Article 62.102(a) is a generalized ‘umbrella’ statute that criminalizes the failure to comply with any of the registration requirements set out in Chapter 62.” *Robinson*, 466 S.W.3d at 170; accord *Young v. State*, 341 S.W.3d 417, 425 (Tex. Crim. App. 2011). Because a failure to comply “is not criminal by its very nature, but rather is made unlawful by the circumstances—the duty to comply by virtue of a reportable conviction . . . the failure-to-register offense is a circumstances-of-conduct offense, and the gravamen of the offense is the duty to register.” *Robinson*, 466 S.W.3d at 170–71. A culpable mental state must attach to the circumstance. *Robinson*, 466 S.W.3d at 172; Tex. Penal Code § 6.02(b) (“If the definition of an offense does not prescribe a culpable mental state, a culpable mental state is nevertheless required unless the definition plainly dispenses with any mental element.”). And because there is no provision for circumstances surrounding

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conduct in the definition of “intent,” the court held that knowledge or recklessness suffices. *Robinson*, 466 S.W.3d at 172; Tex. Penal Code § 6.02(a), (c).

Knowledge or recklessness about what is unclear. *Robinson* analogized chapter 62 to the analysis of “failure to stop and render aid.” *Robinson*, 466 S.W.3d at 171–72 (citing Tex. Transp. Code § 550.021; *Huffman v. State*, 267 S.W.3d 902 (Tex. Crim. App. 2008)). As reiterated in *Robinson*, the implicit mental state of that offense is knowledge that an accident occurred—not that section 550.021 exists. *Robinson*, 466 S.W.3d at 172. This analogy suggests knowledge of the underlying basis for the duty to register, i.e., the conviction, is the gravamen. But the court twice framed the issue as though knowledge of the duty itself is the element. *See Robinson*, 466 S.W.3d at 172–73 (“[T]he culpable mental states of knowledge and recklessness apply only to the duty-to-register element of Article 62.012’s failure-to-comply offense. . . . To sustain Robinson’s failure-to-comply conviction, the statute requires that Robinson (1) knew or was reckless about whether he had a duty to register as a sex offender . . .”). *Robinson* testified to being aware of his duty, so context is unhelpful. *Robinson*, 466 S.W.3d at 173.

Given that the relationship between the conviction/adjudication and duty is a matter of law and that ignorance of the law is no excuse, the proper question for the jury is arguably whether the registrant knew or was reckless about whether he was adjudicated or convicted. *See* Tex. Penal Code § 8.03(a). Practically, however, it makes little difference for defendants whose duty arises from a Texas conviction because it is easy to prove they were admonished about chapter 62 by a judge, the probation department, before release from prison, etc. Defendants with an extrajudicial qualifying conviction are a different matter. Unless someone’s out-of-state supervision is transferred to Texas, there is no framework for notifying people who move here that they have a duty to register. This is a special concern for those who had no duty to register in their home state or, worse, had a duty that expired without incident. For this reason and others, a near-unanimous Committee agreed that the requisite mental states should attach to the duty to register rather than the fact of conviction (or adjudication). The alternative approach would frame the relevant mental state definitions thus:

“Knew He Had a Reportable [Conviction/Adjudication]”

A person knows he has a reportable [conviction/adjudication] when he is aware the [conviction/adjudication] exists.

“Was Reckless about whether He Had a Reportable [Conviction/Adjudication],”

A person is reckless with respect to whether he has a reportable [conviction/adjudication] when he is aware of but consciously disregards a substantial and unjustifiable risk that the reportable [conviction/adjudication] exists. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

In the application of law to facts unit, the elements of the offense would include the following:

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- a. knew he had a reportable [conviction/adjudication] for [*insert reason for reporting, e.g., sexual assault/[cause number]/[other]*]; or
- b. was reckless about whether he was [convicted/adjudicated] for [*insert reason for reporting, e.g., sexual assault/[cause number]/[other]*]; and

It should be noted that one of the most common requirements contains an additional mental state. The duty to report an anticipated move date and new address under article 62.055(a) is triggered by the intent to change addresses and, arguably, knowledge of the date of the intended change. *See* Tex. Code Crim. Proc. art. 62.055(a) (“If a person required to register under this chapter intends to change address, . . . the person shall, not later than the seventh day before the intended change, report in person . . . and provide the authority and the officer with the person’s anticipated move date and new address.”). This element has become an issue in multiple “unintended move” scenarios, including evictions and domestic situations. *See, e.g., Green v. State*, 350 S.W.3d 617, 620 (Tex. App.—Houston [14th Dist.] 2011, pet. ref’d) (wife said she changed their joint residence while he was working out of state and he did not find out until his return); *Ford v. State*, 313 S.W.3d 434, 436 (Tex. App.—Waco 2010), *rev’d on other grounds*, 334 S.W.3d 230 (Tex. Crim. App. 2011) (defendant claimed his trailer was towed away without his knowledge). And it was a case involving article 62.055(a) that recently prompted three judges—two still present—to disapprove of limiting the requisite mental state to the duty to register. *See Febus v. State*, 542 S.W.3d 568, 581 (Tex. Crim. App. 2018) (Richardson, J., dissenting) (“I would hold that the offense of failing to register under the statute is violated when one (1) knows or should know that he has a duty to register and (2) *intentionally, knowingly, or recklessly* fails to comply with that duty to register.”).

Duration and Frequency of Registration Are Not Elements for the Jury.

In *Juarez v. State*, the court held that the duration and frequency of registration duties are “the elements that determine the degree of felony,” as opposed to “the basic elements of the felony,” which are found in article 62.102(a). *Juarez v. State*, 198 S.W.3d 790, 793 (Tex. Crim. App. 2006). Put another way:

Specifically, Article 62.10[2](a) provides that a person commits an offense if that person is required to register and fails to comply with any other requirement of Chapter 62. Article 62.10[2](b) sets out *other elements*, and its language indicates that the legislature based its choice of penalty range on the nature of the underlying “reportable conviction”: the more serious the original sexual offense, the more serious the penalty for failure to register.

Juarez, 198 S.W.3d at 793 (emphasis added). This seeming creation of the concept of “other elements” was the justification used by the court to declare that article 62.102(b)(1), (b)(2), and (b)(3) “describe separate offenses and are not enhancement provisions.” *Juarez*, 198 S.W.3d at 794. It is unclear why they had to be one or the other; subsection (b) does not imply findings of any kind but says, simply, “[a]n offense under this article is . . .” Tex. Crim. Proc. art. 62.102(b).

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Perhaps these “other elements” are not elements of an offense but, in *Apprendi* parlance, a “fact that increases the penalty.” *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). Moreover, this holding appears to be *dicta*. The question presented was whether under *Apprendi* “the trial court was cloaked with the authority to make a factual determination [about the registration duty] thereby allowing an enhanced punishment.” *Juarez*, 198 S.W.3d at 792, n.6. After its determination that article 62.102(b) sets out three offenses, the court reached the *Apprendi* claim and held that the jury did make the requisite determination that Juarez was convicted of an offense that would have triggered the maximum offense level. *Juarez*, 198 S.W.3d at 794. In a footnote, the court appeared to clarify that the jury’s finding was Juarez’s connection to the offense, not the ramifications on his duty to register (or, as a result, his offense level). *Juarez*, 198 S.W.3d at 794 n.12 (“A rational jury could not have found appellant guilty as alleged in the indictment without finding that at least one of those judgments was sufficiently connected to appellant so as to support a finding that he had a reportable conviction.”). The court went further, noting that it would not have mattered had the judge made this determination because “it would have been *the fact of a prior conviction*.” *Juarez*, 198 S.W.3d at 795, n.13.

This last statement exposes the problem with treating the duration and frequency of registration as any kind of elements—both are dictated by the prior conviction. That is, the conversion from the offense of registration to the resulting duty is a question of law. It would be sufficient to ask the jury to find the defendant was convicted of the offense and simply inform them of the punishment range at the appropriate time. If the jury is asked to find the duration and frequency at guilt, they must be told what the alleged offense of registration requires. Given trial court familiarity with asking juries to find prior convictions beyond a reasonable doubt, the former option is preferable.

Notwithstanding *Juarez*’s explanation of what the jury actually considers with regard to article 62.102(b)(1) through (b)(3), the court in one case appeared to have accepted that the hypothetically correct jury charge (for a case with a Texas reportable conviction) includes four elements: (1) the defendant was required to register, (2) he failed to comply with that requirement, (3) the duration of his registration duty under article 62.101, and (4) the frequency of his registration duty under article 62.058. *Crabtree*, 389 S.W.3d at 824 (setting out lower court’s list). The issue in *Crabtree* was not these elements, however, but what must be proven for extrajurisdictional offenses, discussed above. It is thus unclear whether the Court meant to suggest the jury must decide the duration and frequency *per se*. Moreover, the court of criminal appeals has omitted the extra “elements” since *Crabtree*. *Thomas v. State*, 444 S.W.3d 4, 9 (Tex. Crim. App. 2014) (“[A] hypothetically correct jury charge would require a jury to find Appellant guilty if (1) he was required to register as a sex offender under Chapter 62 of the Texas Code of Criminal Procedure, and (2) he failed to comply with Article 62.055(a) of the Texas Code of Criminal Procedure.”). Lower courts have done the same. *See, e.g., Howard v. State*, No. 13-13-00390-CR, 2014 WL 2619087, at *6 (Tex. App.—Corpus Christi–Edinburg Mar. 20, 2014, pet. ref’d) (hypothetically correct jury charge would state that appellant is guilty “if (1) he was required to register under chapter 62 of the code of criminal procedure, and (2) he failed to comply with [an

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article of chapter 62]”); *VanHook v. State*, No. 09-12-00066-CR, 2013 WL 5658370, at *1 (Tex. App.—Beaumont Oct. 16, 2013, pet. ref’d) (elements are “(a) the person is required to register as a sex offender, and (b) he or she fails to comply with any requirement of Chapter 62 of the Code of Criminal Procedure”) (citing *Crabtree*, 389 S.W.3d at 825)).

Voluntariness. In *Febus*, the court reaffirmed that knowledge or recklessness about the duty to register is the only mental state required. *Febus*, 542 S.W.3d at 573 (rejecting that his failure also be intentional). But it adopted Presiding Judge Keller’s suggestion that, “[i]f authorities rebuff a sex-offender’s repeated attempts to register, the sex offender may be able to claim an exemption from or defense to criminal liability on the basis that his failure to act was involuntary.” *Febus*, 542 S.W.3d at 573–74 (citing *Robinson*, 466 S.W.3d at 174 (Keller, P.J., concurring)); see Tex. Penal Code § 6.01(a). That theory was not a good fit for *Febus*, however. His argument was that he reported the correct address and the authority made a clerical error, not that he tried to give them the address but was “rebuffed,” or even that he involuntarily gave the wrong address. *Febus*, 542 S.W.3d at 573–74. One court of appeals considered the theory but denied relief because the registrant did “not accuse the [registering authority] of (i) preventing him from registering, or (ii) entering the wrong address on his update form.” *Clark v. State*, No. 05-17-01384-CR, 2018 WL 5816879, at *4 (Tex. App.—Dallas Nov. 7, 2018, no pet.) (mem. op., not designated for publication). Another court (perhaps) granted relief on the “frustration” theory. *McClain v. State*, No. 05-19-00146-CR, 2020 WL 913844, at *5–6 (Tex. App.—Dallas Feb. 26, 2020, pet. ref’d) (not designated for publication) (state failed to prove knowledge of duty to register and, alternatively, that registrant’s attempts to register were “frustrated” despite failing to appear at appointment made for him in his presence).

Extrajurisdictional Offenses. In *Crabtree*, the court determined that the “substantial similarity” of extrajurisdictional offenses must be determined by the Department of Public Safety (DPS), not courts. *Crabtree*, 389 S.W.3d at 832; see also Tex. Code Crim. Proc. art. 62.003 (assigning responsibility to DPS and providing a review mechanism). The court called this “a condition precedent to proving he had a duty to register.” *Crabtree*, 389 S.W.3d at 832. “Without proving that *Crabtree*’s conviction satisfied this definition, he could not have committed the charged offense because he would not labor under an obligation to register.” *Crabtree*, 389 S.W.3d at 832. This means not only that the state could not obtain a conviction without a DPS determination but that an offender has no duty to register until DPS makes it. When confronted with that consequence—offenders who choose not to ask DPS if their extrajurisdictional offense qualifies and therefore go unregistered—the court was unmoved: “If, through our restrained approach in interpreting the plain language enacted by the Legislature, we have exposed a weakness in the state’s statutory scheme not intended by the Legislature, it has the ability to remedy it.” *Crabtree*, 389 S.W.3d at 830.

The court gave mixed messages about the jury’s role in all this. It clarified that this DPS determination is a matter of law but went on to say, “[w]hile a jury must find that *Crabtree* has a reportable conviction or adjudication that requires him to register, it is not the jury’s role to determine whether a particular conviction or adjudication legally satisfies article 62.001(5)(H).”

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Crabtree, 389 S.W.3d at 832. The court added, “In a case in which a duty to register is imposed by virtue of an extra-jurisdictional conviction or adjudication, this distinction between issues of fact and law is appropriately addressed by a jury charge that instructs the jury in the abstract and correctly sets out the law of the case.” *Crabtree*, 389 S.W.3d at 832. (citing articles 36.13 and 36.14, which set out the roles of the judge and jury generally). However, because there was no evidence that DPS made the determination in *Crabtree*’s case, it remains unclear what role the jury plays. *Crabtree*, 389 S.W.3d at 833.

The Committee decided that the fact issue for the jury is whether DPS has made the relevant determination. As one court of appeals has pointed out, proving this is functionally equivalent to proving prior convictions for punishment enhancement. *Scott v. State*, No. 13-12-00671-CR, 2014 WL 5314508, at *4, n.3 (Tex. App.—Corpus Christi—Edinburg Oct. 16, 2014, pet. ref’d) (“[W]e note that the State could prove the DPS determination in many ways, including, but not limited to: (1) the defendant’s admission or stipulation; (2) testimony by a person who was present when the determination was made (e.g. a DPS officer involved in the determination); or (3) documentary proof (such as a record of the determination).”). The Committee considered situations in which DPS made its determination prior to a defendant’s failure to comply but that determination was reversed prior to trial. The Committee concluded that, like unlawful possession of a firearm by a felon, what matters is the defendant’s status at the time of the violation. *See Ex parte Jimenez*, 361 S.W.3d 679, 683–84 (Tex. Crim. App. 2012) (“[I]f the defendant had the status of a felon at the time he possessed the firearm, a conviction for unlawful possession of a firearm by a felon is not void if the predicate felony conviction is subsequently set aside.”). The Committee proposes the following phrasing for this element in the application of law to facts unit, which should be listed second:

2. at the time of the alleged failure to comply, the Department of Public Safety had determined that this offense contains elements that are substantially similar to the elements of an offense under the laws of this state;

This effectively tracks the language of article 62.003(a) while accounting for the possibility that DPS’s determinations are subject to change.

Unanimity. In *Young*, the court of criminal appeals held that a jury need not be unanimous about whether a registrant failed to report an intended change of address before or after a move as required by article 62.055. *Young*, 341 S.W.3d at 425. “The State alleged one specific circumstance or duty—the duty to report a change of address—and two specific failures to fulfill that duty—the duty to report an intended change of address before moving and the duty to report a completed change of address.” *Young*, 341 S.W.3d at 425. “The focus of the statute is on giving notification to law enforcement and not the means by which a sex offender failed to do so.” *Young*, 341 S.W.3d at 427. Therefore, “[j]urors must unanimously agree only that a sex offender failed to fulfill his reporting duty; they are not required to agree as to how he failed that duty.” *Young*, 341 S.W.3d at

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427–28. The court of criminal appeals specified that the unit of prosecution is one offense for one change (or intended change) of address. *Young*, 341 S.W.3d at 426.

The court also suggested that a different result would be warranted had the state charged the failure to comply with different statutory duties in chapter 62. “If that had occurred, . . . the jury would have to unanimously agree upon one specific statutory failure.” *Young*, 341 S.W.3d at 425; see *Herron v. State*, 625 S.W.3d 144, 153 (Tex. Crim. App. 2021) (“Thus, while Article 62.102(a) may be used to prosecute any failure to comply with sex offender registration obligations, the State must allege and prove, and the fact-finder must unanimously find, that the defendant has committed ‘one specific statutory failure’—a violation of a discrete statutory provision within the numerous requirements of Chapter 62.”) (citing *Young*). This outcome might make sense and, from a prosecution standpoint, might be desirable because it permits multiple convictions based on violations of discrete statutory duties. And it is consistent with the idea that Article 62.055 creates an offense. *Young*, 341 S.W.3d at 426–27. But failure to comply is only an offense by virtue of article 62.012(a). As stated elsewhere in *Young* and repeated since, article 62.102(a) “is a generalized ‘umbrella’ statute that criminalizes the failure to comply with any of the registration requirements set out in Chapter 62.” *Young*, 341 S.W.3d at 425; *Robinson*, 466 S.W.3d at 170. If failure to register is a circumstances-of-conduct offense, and the gravamen of the offense is the duty to register, it arguably should not matter how that duty was violated so long as the jury unanimously believes it was. The various duties outlined by chapter 62 seem to pass the “moral and conceptual equivalence” test for unanimity in umbrella crimes, drawn from *Schad v. Arizona*, 501 U.S. 624 (1991), and discussed in the context of felony murder, *Contreras v. State*, 312 S.W.3d 566 (Tex. Crim. App. 2010), injury to a child, *Jefferson v. State*, 189 S.W.3d 305 (Tex. Crim. App. 2006), and engaging in organized criminal activity, *O’Brien v. State*, 544 S.W.3d 376 (Tex. Crim. App. 2018). As it happens, registrants are typically prosecuted as soon as their first violation is apparent, avoiding this problem. *But see Howard v. State*, No. 13-13-00390-CR, 2014 WL 2619037, at *5, n.5, 7, 9 (Tex. App.—Corpus Christi–Edinburg Mar. 20, 2014, pet. ref’d) (mem. op., not designated for publication) (upholding convictions for failure to comply with both articles 62.055(a) and 62.059, the “regularly visiting” requirement).

Stipulations. Defendants often stipulate to the existence of a reportable conviction or adjudication to avoid drawing unnecessary attention to it. CPJC .

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LAW SPECIFIC TO THIS CASE

The state accuses the defendant of having committed the offense of failing to register a change of address.

Relevant Statutes

A person commits an offense if the person has a duty to register as a sex offender because of a reportable [conviction/adjudication] and fails to comply with a registration requirement. One requirement is to report to the appropriate registration authority (1) an intended change of address not later than the seventh day before the intended change and (2) a completed change of address not later than the later of the seventh day after changing the address or the first date the applicable registration authority allows the person to report.

Definitions

Reportable [Conviction/Adjudication]

“Reportable [conviction/adjudication]” means a [a/an] [conviction/adjudication, including an adjudication of delinquent conduct or a deferred adjudication,] [*include if raised by the evidence*: that, regardless of the pendency of an appeal, is] [for/based on] certain criminal offenses. [A/an] [conviction/adjudication] for [*insert offense, e.g., sexual assault*] is a reportable [conviction/ adjudication].

Local Law Enforcement Authority

“Local law enforcement authority” means, as applicable, the office of the chief of police of a municipality, the office of the sheriff of a county in this state, or a centralized registration authority.

“Knew He Was Required to Register”

A person knows he is required to register when he is aware he has a duty to register.

“Was Reckless about whether He Was Required to Register”

A person is reckless with respect to his duty to register when he is aware of but consciously disregards a substantial and unjustifiable risk that the duty exists. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

“Intended to Change Address”

A person acts with intent to change his address when it is his conscious objective or desire to change his address.

Residence

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“Residence” includes a residence established in this state by a person who resides in another state and who is employed, carries on a vocation, or is a student in this state if the person establishes the residence in this state to work or attend school in this state.

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, three elements. The elements are that—

1. the defendant has a reportable [conviction or adjudication] for [*insert reason for reporting, e.g., sexual assault/[cause number]/[other]*]; and
2. the defendant, in [county] County, Texas, on or about [date],
 - a. knew he was required to register; or
 - b. was reckless about whether he was required to register; and
3. the defendant
 - a. intended to change address, and not later than the seventh day before the intended change
 - i. the defendant failed to report in person to
 - (a) the local law enforcement authority designated as the person’s primary registration authority by the department; or
 - (b) the [juvenile probation officer/community supervision and corrections department officer/parole officer supervising the person]; and
 - ii. the defendant failed to provide them with
 - (a) the defendant’s anticipated move date; or
 - (b) the defendant’s anticipated new address; or
 - b. did change address and failed to report in person, within seven days or by the first date the applicable local law enforcement authority by policy allows the person to report, to the local law enforcement authority in the municipality or county in which the person’s new residence is located and:
 - i. provide the authority with proof of identity; or
 - ii. provide the authority with proof of residence.

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You must all agree on elements 1, 2, and 3. You need not all agree on either 3.a.i.(a), 3.a.i.(b), 3.a.ii.(a), 3.a.ii.(b), 3.b.i., or 3.b.ii, but you must all find that the state proved one of these beyond a reasonable doubt.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more elements listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, each of the elements listed above, you must find the defendant “guilty.”

[Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge.]

COMMENT

The relevant statutes defining the offense are Tex. Code Crim. Proc. arts. 62.102(a) (offense), 62.055(a) (duty), 62.002(a) (general applicability), and 62.001(5) (“reportable conviction or adjudication”). “Local law enforcement authority” is defined by article 62.001(2). “Residence” is defined by article 62.001(7), which incorporates article 62.152(e). The mental states are defined by Tex. Penal Code § 6.03.

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LAW SPECIFIC TO THIS CASE

The state accuses the defendant of failing to register a change of address.

Relevant Statutes

A person commits an offense if the person has a duty to register as a sex offender because of a reportable [conviction/adjudication] and fails to comply with a registration requirement. One requirement is to report a change in address to the local law enforcement authority in the municipality or county in which the person's new residence is located and provide the authority with proof of identity and proof of residence.

Definitions

Reportable [Conviction/Adjudication]

"Reportable [conviction/adjudication]" means [a/an] [conviction/adjudication, including an adjudication of delinquent conduct or a deferred adjudication,] [include if raised by the evidence: that, regardless of the pendency of an appeal, is] [for/based on] certain criminal offenses. [A/an] [conviction/adjudication] for [insert offense, e.g., sexual assault] is a reportable [conviction/adjudication].

Local Law Enforcement Authority

"Local law enforcement authority" means, as applicable, the office of the chief of police of a municipality, the office of the sheriff of a county in this state, or a centralized registration authority.

"Knew He Was Required to Register"

A person knows he is required to register when he is aware he has a duty to register.

"Was Reckless about whether He Was Required to Register"

A person is reckless with respect to his duty to register when he is aware of but consciously disregards a substantial and unjustifiable risk that the duty exists. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

"Intended to Change Address"

A person acts with intent to change his address when it is his conscious objective or desire to change his address.

Residence

“Residence” includes a residence established in this state by a person who resides in another state and who is employed, carries on a vocation, or is a student in this state if the person establishes the residence in this state to work or attend school in this state.

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, four elements. The elements are that—

1. the defendant has a conviction for *[insert reason for reporting, e.g., sexual assault/[cause number]/[other]]*; and
2. at the time of the alleged failure to comply, the Department of Public Safety had determined that this offense contains elements that are substantially similar to the elements of an offense under the laws of this state; and
3. the defendant, in *[county]* County, Texas, on or about *[date]*,
 - a. knew he was required to register; or
 - b. was reckless about whether he was required to register; and
4. the defendant changed address and failed to report in person within seven days to the local law enforcement authority in the municipality or county in which the person’s new residence is located and
 - a. provide the authority with proof of identity; or
 - b. provide the authority with proof of residence.

You must all agree on elements 1, 2, 3, and 4. You need not all agree on elements 3.a. or 3.b. but you must all find that the state proved one of these elements beyond a reasonable doubt.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more elements listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, each of the elements listed above, you must find the defendant “guilty.”

[Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge.]

COMMENT

The relevant statutes defining the offense are Tex. Code Crim. Proc. arts. 62.102(a) (offense), 62.055(a) (duty), 62.002(a) (general applicability), and 62.001(5) (“reportable conviction or adjudication”). “Local law enforcement authority” is defined by article 62.001(2). “Residence” is defined by article 62.001(7), which incorporates article 62.152(e). The mental states are defined by Tex. Penal Code § 6.03.

2. a. Proposed New Draft on Failure to Register

LAW SPECIFIC TO THIS CASE

The state accuses the defendant of failing to report annually to designated local law enforcement.

Relevant Statutes

A person commits an offense if the person has a duty to register as a sex offender because of a reportable [conviction/adjudication] and fails to comply with a registration requirement. One requirement is to report to his designated local law enforcement authority as directed to verify the information in the registration form maintained by that authority.

Definitions

Reportable [Conviction/Adjudication]

“Reportable [conviction/adjudication]” means [a/an] [conviction/adjudication, including an adjudication of delinquent conduct or a deferred adjudication,] [include if raised by the evidence: that, regardless of the pendency of an appeal, is] [for/based on] certain criminal offenses. [A/An] [conviction/adjudication] for [insert offense, e.g., sexual assault] is a reportable [conviction/adjudication].

Local Law Enforcement Authority

“Local law enforcement authority” means, as applicable, the office of the chief of police of a municipality, the office of the sheriff of a county in this state, or a centralized registration authority.

“Knew He Was Required to Register”

A person knows he is required to register when he is aware he has a duty to register.

“Was Reckless about whether He Was Required to Register”

A person is reckless with respect to his duty to register when he is aware of but consciously disregards a substantial and unjustifiable risk that the duty exists. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, [four/five] elements. The elements are that—

1. the defendant has a reportable [conviction/adjudication] for [insert reason for reporting, e.g., sexual assault/[cause number]/[other]]; and
2. the defendant, in [county] County, Texas, on or about [date],
 - a. knew he was required to register; or
 - b. was reckless about whether he was required to register; and

2. a. Proposed New Draft on Failure to Register

3. the defendant was directed to report to his designated local law enforcement authority, [*name of authority*], not earlier than the thirtieth day before and not later than the thirtieth day after the anniversary of the defendant's date of birth; and

[Include only if raised by the evidence.]

4. the defendant had not already reported that year not earlier than the thirtieth day before and not later than the thirtieth day after the anniversary of the defendant's date of birth; and
[Continue with the following.]

5. the defendant did not report as directed.

You must all agree on elements 1, 2, 3, [and 4/4, and 5].

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more elements listed above, you must find the defendant "not guilty."

If you all agree the state has proved, beyond a reasonable doubt, each of the elements listed above, you must find the defendant "guilty."

[Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge.]

COMMENT

The relevant statutes defining the offense are Tex. Code Crim. Proc. arts. 62.102(a) (offense), 62.058(b) (duty), 62.002(a) (general applicability), and 62.001(5) ("reportable conviction or adjudication"). "Local law enforcement authority" is defined by article 62.001(2). The mental states are defined by Tex. Penal Code § 6.03.

Regarding element 4 in the application of law to facts unit, the Committee determined that the statutory limitation on the local law enforcement authority's ability to direct a person to report if he has already reported during the applicable period is best analogized to a defense, which the state must disprove beyond a reasonable doubt only if raised by the evidence. See Tex. Penal Code § 1.03(b) (applying title 2 of the Penal Code to offenses defined by other laws), § 2.03(e) ("A ground of defense in a penal law that is not plainly labeled in accordance with this chapter has the procedural and evidentiary consequences of a defense."), § 2.03(c) ("The issue of the existence of a defense is not submitted to the jury unless evidence is admitted supporting the defense.").

CPJC 82.5 Instruction—Failed to Provide Driver's License Number

2. a. Proposed New Draft on Failure to Register

LAW SPECIFIC TO THIS CASE

The state accuses the defendant of failing to register his driver's license number.

Relevant Statutes

A person commits an offense if the person has a duty to register as a sex offender because of a reportable [conviction/adjudication] and fails to comply with a registration requirement. One requirement is to include his driver's license number on the registration form maintained by his designated local law enforcement authority.

Definitions

Reportable [Conviction/Adjudication]

"Reportable [conviction/adjudication]" means [a/an] [conviction/adjudication, including an adjudication of delinquent conduct or a deferred adjudication,] [include if raised by the evidence: that, regardless of the pendency of an appeal, is] [for/based on] certain criminal offenses. [A/An] [conviction/adjudication] for [insert offense, e.g., sexual assault] is a reportable [conviction/adjudication].

Local Law Enforcement Authority

"Local law enforcement authority" means, as applicable, the office of the chief of police of a municipality, the office of the sheriff of a county in this state, or a centralized registration authority.

"Knew He Was Required to Register"

A person knows he is required to register when he is aware he has a duty to register.

"Was Reckless about whether He Was Required to Register"

A person is reckless with respect to his duty to register when he is aware of but consciously disregards a substantial and unjustifiable risk that the duty exists. The risk must be of such a nature and degree that his disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, four elements. The elements are that—

1. the defendant has a reportable [conviction/adjudication] for [insert reason for reporting, e.g., sexual assault/[cause number]/[other]]; and
2. the defendant, in [county] County, Texas, on or about [date],
 - a. knew he was required to register; or
 - b. was reckless about whether he was required to register; and

2. a. Proposed New Draft on Failure to Register

3. the defendant has a driver's license; and
4. the defendant did not include it on his registration form.

You must all agree on elements 1, 2, 3, and 4.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more elements listed above, you must find the defendant "not guilty."

If you all agree the state has proved, beyond a reasonable doubt, each of the elements listed above, you must find the defendant "guilty."

[Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge.]

COMMENT

The relevant statutes defining the offense are Tex. Code Crim. Proc. arts. 62.102(a) (offense), 62.051(b), (c)(1), (k) (duty), 62.002(a) (general applicability), and 62.001(5) ("reportable conviction or adjudication"). "Local law enforcement authority" is defined by article 62.001(2). The mental states are defined by Tex. Penal Code § 6.03.

Texas Bar Books Preview Form

LAW SPECIFIC TO THIS CASE

The state accuses the defendant of failing to report a new online identifier.

Relevant Statutes

A person commits an offense if the person has a duty to register as a sex offender because of a reportable [conviction/adjudication] and fails to comply with a registration requirement. One requirement is to report the establishment of an online identifier to the person’s primary registration authority.

Definitions

Reportable [Conviction/Adjudication]

“Reportable [conviction/adjudication]” means [a/an] [conviction/adjudication, including an adjudication of delinquent conduct or a deferred adjudication,] [*include if raised by the evidence*: that, regardless of the pendency of an appeal, is] [for/based on] certain criminal offenses. [A/An] [conviction/adjudication] for [*insert offense, e.g., sexual assault*] is a reportable [conviction/adjudication].

Online Identifier

“Online identifier” means electronic mail address information or a name used by a person when sending or receiving an instant message, social networking communication, or similar Internet communication, or when participating in an Internet chat. The term includes an assumed name, nickname, pseudonym, moniker, or user name established by a person for use in connection with an electronic mail address, chat or instant chat room platform, commercial social networking site, or online picture-sharing service.

Primary Registration Authority

“Primary registration authority” means the local law enforcement authority determined by the Department of Public Safety to meet applicable statutory criteria.

Local Law Enforcement Authority

“Local law enforcement authority” means, as applicable, the office of the chief of police of a municipality, the office of the sheriff of a county in this state, or a centralized registration authority.

“Knew He Was Required to Register”

A person knows he is required to register when he is aware he has a duty to register.

“Was Reckless about whether He Was Required to Register”

A person is reckless with respect to his duty to register when he is aware of but consciously disregards a substantial and unjustifiable risk that the duty exists. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint.

2. a. Proposed New Draft on Failure to Register

Application of Law to Facts

You must determine whether the state has proved, beyond a reasonable doubt, four elements. The elements are that—

1. the defendant has a reportable [conviction/adjudication] for [*insert reason for reporting, e.g., sexual assault/[cause number]/[other]*]; and
2. the defendant, in [county] County, Texas, on or about [date],
 - a. knew he was required to register; or
 - b. was reckless about whether he was required to register; and
3. the defendant established a new online identifier; and
4. the defendant failed to report it to his primary registration authority not later than
 - a. the seventh day after the online identifier was established; or
 - b. the first date the applicable authority by policy allowed him to report it.

You must all agree on elements 1, 2, 3, and 4. You need not agree on elements 4.a. or 4.b. but you must all find that the state proved one of these elements beyond a reasonable doubt.

If you all agree the state has failed to prove, beyond a reasonable doubt, one or more elements listed above, you must find the defendant “not guilty.”

If you all agree the state has proved, beyond a reasonable doubt, each of the elements listed above, you must find the defendant “guilty.”

[Insert any other instructions raised by the evidence. Then continue with the verdict form found in CPJC 2.1, the general charge.]

COMMENT

The relevant statutes defining the offense are Tex. Code Crim. Proc. arts. 62.102(a) (offense), 62.0551(a) (duty), 62.002(a) (general applicability), and 62.001(5) (“reportable conviction or adjudication”). “Online identifier” is defined by article 62.001(12). “Primary registration authority” is defined by article 62.004(a). “Local law enforcement authority” is defined by article 62.001(2). The mental states are defined by Tex. Penal Code § 6.03.

2. a. Proposed New Draft on Failure to Register