

Sex Offender Registration Ad Hoc Recommendations

The Ohio Criminal Sentencing Commission identified the administration and application of current sex offender registration laws as one of its priorities for 2015 and created an Ad Hoc Committee to address the topic. The Recodification Committee assigned workgroups to chapters 2907 and 2950 of the Ohio Revised Code and those groups are working in collaboration with the Sentencing Commission Ad Hoc committee. The combination of the groups include representation from sheriffs, prosecutors, defense, Department of Rehabilitation and Correction, victims, judges, the Judicial Conference and the Attorney General's Office.

The underlying questions are straightforward, does the current sex offender registration process fulfill its purpose to protect the public and reduce recidivism? Does the current sex offender registration law meet the spirit of how it was intended? There is no research that links registration and reduced recidivism. The front line implication of the laws, the difficulty in the implementation and administration validate the need for reform.

The current offense-based system is not a transparent, accountable risk-based system that allows judicial discretion in placement of an offender within a tier and/or to determine the offense is such that registration furthers the interest of justice. Movement toward a risk based system will create safer communities, protect the public, ensure effective offender management and punishment, advance criminal justice outcomes and ease administrative burden and conserve fiscal resources while improving efficiency, accuracy and efficacy of sex offender registration.

There is no clear evidence to support that SORNA implementation has made the public safer, deterred any sexual offenses, or contributed to the arrest or discovery of any sex offender. Many officials, nationally as well as in Ohio, conclude that the offense-based tier system "pulls too many offenders onto the registry" and overlooks others who are most at risk to reoffend. This costs taxpayers millions of dollars, compromises public safety and dilutes the validity of the registry to the point of ineffectiveness.

The mandates of the Adam Walsh Act (AWA) virtually eliminate the judiciary from exercising any discretion in controlling sex offenders. The AWA prohibits judges from considering each offender as an individual and de-emphasizes individualized risk assessments as a tool for managing and monitoring convicted offenders. Applying risk principles to individualized sentencing allows scant resources to be directed to those at greatest risk for re-offense¹

There are four strategies which can incorporate scholarly findings into sex offender management practices, all of which necessitate restoring some discretion to the judiciary in sanctioning sex offenders. First, legislation should be modified to authorize judges to determine when individual low-level sex offenders will be subject to registration duties. Second, laws should permit judges to consider risk assessments in managing sex offenders. Third, legislation should enable judges to deregister first time sex offenders after a reasonable period of full compliance with registration obligations. Finally, sex offender management should incorporate the proven practices associated with problem-solving courts².

The construct of the AWA impinges on the role of the judge in effective offender management by limiting consideration to offense type only. Consistent with the principles of correctional intervention, the dossier of information the judiciary may consider in fashioning individualized sanctioning should be multi-dimensional, whereas the mandates of the AWA rely on a single, static factor, offense type. Judges must weigh the competing purposes of sentencing, which include rehabilitation, incapacitation, deterrence and retribution³.

¹ Huffman p42, [footnote 181]. Huffman, p44 The California Sex Offender Management Board recently recommended that the sex offender registration system in California follow the risk principles of correction in order for resources to be directed to those who pose the highest risk of reoffending. See California Sex Offender Management Board 2014 Annual Report, supra note 118 .

² Huffman, p44-45

³ Huffman, p43

Therefore, a hybrid system of sex offender registration is recommended. A hybrid system provides mandatory registration for serious, high risk offenders, while giving trial courts discretion for first time low level offenders after consideration of an appropriate risk assessment. Therefore, the essential elements of implementing a hybrid risk and offense based system include:

1. Review current Tier based offense classifications for potential adjustment.
2. Maintain the child victim offender provisions.
3. Retain Tier based offense classifications and prescribed registration periods, but allow the option, based upon empirical evidence, data and additional factors for deregistration. The provision for deregistration can be crafted similar to the judicial release process and should specify the number of applications an offender may file and the time between applications.
4. Tier 3 offender registration and offenders with a prior conviction for a sexual offense should remain offense-based and mandatory. Allow the option for deregistration after a period of time, sufficient empirical evidence, data, and other factors [must register with the County Sheriff every 90 days for life. In addition, must register any change of residential address, place of employment, or enrollment in a school or institution of higher education].
5. Tier 2 offender registration should be risk based, determined by the trial court with a presumption in favor of registration, using a clear and convincing standard and a validated, dynamic sex offender specific risk assessment and evaluation. Tier 2 offender registration should include the option for deregistration after a period of time, sufficient empirical evidence, data and other factors. Maintain the registration period with current law [register with the County Sheriff every 180 days for a period of 25 years].
6. Tier 1 offender registration should be risk based, determined by the trial court using a clear and convincing standard and a validated, dynamic sex offender specific risk assessment and evaluation and include the option for deregistration after a period of time, sufficient empirical evidence, data and other factors. Maintain the registration period with current law [register with the County Sheriff at least once annually for a period of 15 years].
7. The explanation of the registration requirements and potential penalties should be part of a meaningful colloquy at the time of plea and sentencing, thereby providing meaningful notice to the offender. The requirement to read a form on the record should be eliminated; rather the form should be signed and reviewed by defendant and counsel.
8. Clarify, define, and simplify the tolling of registration to provide for consistency and accuracy of registration periods.
9. Consider a centralized/State system and one county registration, by redefining jurisdiction to “State”.
10. There is no empirical evidence to support public safety is enhanced through residency restrictions. Therefore, permit the Judge to impose residency restrictions based upon risk and fact pattern of offense.

11. Maintain in person registration for verification, annual registration, and change of address. For all other changes allow electronic/on-line updates. Also:
 - A. Clarify days – business, consecutive
 - B. Address consequence/penalty for failure to update i.e. email address
 - C. Specify Sheriff may make exception to process requirements if person is incapacitated
 - D. Clearly define residence, temporarily domiciled and clarify number of days
 - E. Specify secondary residence for registration purposes is permitted
12. Include an option for deregistration after a period of time, sufficient empirical evidence, data and other factors should be applied to *all* offenders, i.e. applied retroactively and subject to process and limitations suggested in 1(B). There is no option to change assigned Tier. Clearly articulate policy and specify impact of statutory revision(s) to current registrants.
13. Eliminate dual registration requirements for subsequent offenses – i.e. 2950.07(C) and specify the default registration period is to the most serious and/or longer period.
14. Specify that community notification occur at the time of the initial registration and then annually unless there is a change in address.
15. Failure to Register penalties: For first offense, violation of registration (2950.04, 2950.05, 2950.06) should be a F5 if the underlying offense was an F3, F4, or F5. Subsequent violations of registration offense should be an F4. Violation of registration should be a F3 if underlying offense was a F1 or F2. No violation of registration offense should include mandatory prison time.
16. Recommend and implement statewide forums for ongoing public education and prevention to include victim specific events and engagements. Such events should be funded through reinvesting and reallocating cost savings from implementing a more efficient, public safety minded, risk based registry for Tier 1 and 2 offenders. If JAG funding for victim programs is impacted, the legislature should ensure adequate, substitute funding for those programs from the State budget.