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Something Is Wrong with the Sex Offender Registry, and Deregistration Is the Only Tool We Have to Fix It

[1][Features](#)

[2][Dr. Matthew L. Ferrara](#)

[3][Emma Hamilton](#)

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Something Is Wrong with the Sex Offender Registry, and Deregistration Is the Only Tool We Have to Fix It

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[4]

?When the information changes, I change my mind. What do you do??

?John Maynard Keynes

Something is wrong with the sex offender registry. It is not working the way it was intended to work. Worse, the registry is causing innocent people to be harmed. Yet none of these innocent people harmed by the registry are convicted sex offenders.

Before diving into a discussion regarding the public sex offender registry, it is important to note that this article is not a critique of those who created and implemented the registry. Nor is this article a critique of those who keep the registry functioning. Rather, this article provides empirically based information about the utility of the registry and how deregistration might improve the registry.

The Intended and Unintended Effects of the Sex Offender Registry

Public registration of sex offenders was prompted by good intentions and fueled by a laudable goal. But public registration was implemented before it could be researched. In fact, there was no way to research

public registration without implementing it. Now, public registration has been researched, and there is scientific proof that public registration does not produce the intended effect of reduced sex offender recidivism.

The vast majority of studies aimed at measuring the impact of the registry on sexual re-offense rates have found no effect of registration and community notification on preventing sexual re-offense (Adkins, Huff, & Stageberg, 2000; Letourneau, Levenson, Bandyopadhyay, Armstrong, & Sinha, 2010; Prescott & Rockoff, 2008; Sandler, Freeman, & Socia, 2008; Schram & Miloy, 1995; Tewksbury, Jennings, & Zgoba, 2012; Zevitz, 2006). A handful of studies have demonstrated the potential for registration laws to actually *increase* recidivism risk by hindering the registrant's reintegration into society (Letourneau & Armstrong, 2008; Prescott, 2012; Wakefield, 2006; Zevitz, 2006). Further, registration may also translate to increased recidivism, as a byproduct of its negative impact on the registrant's financial, social, and psychological standing (Levenson & Cotter, 2005a; Prescott, 2012).

While discovering and describing how the public registry did not have its intended effect, researchers discovered a disheartening unintended effect of the public registry. The public registry victimizes individuals who have never been convicted of a crime—that is, the family and friends of registrants.

Family members of registered offenders have reported significant financial hardship due to the registrant being unable to secure employment (Levenson & Tewksbury, 2009). Sometimes this means families are forced to move to a less desirable neighborhood due to their loved one's status on the registry. Surprisingly and most regrettably, family members have reported being harassed and threatened and have had their property damaged. Those who merely cohabit with registrants have also reported being threatened, harassed, assaulted, injured, or suffered property damage because someone found out that they lived with a registrant (Levenson & Tewksbury, 2009).

Children of registrants frequently experience collateral consequences if the registry status of their parent becomes known (Levenson & Tewksbury, 2009). Children may be stigmatized by adults such as teachers, neighbors, and friends' parents, due to their parent's status on the registry. Children of registrants have been shown to be excluded from playing at friends' houses (56%) or having friends come over to their house (70%: Levenson & Tewksbury, 2009). As a result, children of registrants have been shown to experience anger, depression, anxiety, fear, isolation, and suicidality. These negative emotional consequences translate to spouses, siblings, and parents of registrants as well. Worse, the anger and resentment felt by family members of registrants may even have the potential to perpetuate violence and crime across subsequent generations (Levenson & Tewksbury, 2009).

There is ample research that shows that family support is associated with reduced recidivism among sex offenders (Farkas & Miller, 2007, Levenson & Cotter, 2005b). Placing undue stress on spouses, parents, siblings, and children of registrants appears to increase risk for re-offense of the offender by stripping away a layer of support that would normally serve as a buffer of protection between community and offender (Levenson & Tewksbury, 2009). The public registry thus erodes family support and, consequently, is associated with an increased risk for re-offense (Farkas & Miller, 2007; Tewksbury & Levenson, 2009).

In addition to the negative impact on family members and friends, much of the research to date indicates that collateral consequences of registration and community notification—that is, unintended negative impact on housing, employment, mental health, and relationships—increase the sex offender's risk for recidivism (Lees & Tewksbury, 2006; Levenson & Cotter, 2005a, Levenson & D'Amora, 2007; Levenson, D'Amora, & Hern, 2007; Zevitz, 2006). Removing low- and moderate-risk individuals from the registry would likely alleviate some of the collateral consequences associated with registration, promote social integration and an investment in society, and thus reduce chances of a new sexual offense (Levenson et al., 2007; Robbers, 2009).

False Assumptions that Undermine the Efficacy of the Registry

In 1974, two psychologists documented shortcuts that we all take when making decisions under uncertain conditions (Tversky, & Kahneman, 1974). Two mental shortcuts identified by these psychologists likely played a role in the creation of a sex offender registry that cannot work. These two mental shortcuts are known as the Availability Heuristic and the Similarity Heuristic.

The Availability Heuristic states that if an example comes to mind easily, we conclude there is a high probability of that particular event. Newspapers and television news channels follow a simple maxim to gain readers and viewers: *if it bleeds, it leads.* In other words, news programs gain viewers if the news is about the most gruesome, the nastiest, and the bloodiest. In a world driven by selling advertisements and commercials, reporting on the sex offender who victimizes strangers is the most valuable. But that type of sex offender is rare. In fact, the majority of sex offenders know their victims (Finn, 1997; Truman, 2011).

The Similarity Heuristic states that if you have a prototypical view of a person, place, or thing, you assume that all members of that category behave in the same way. In other words, if you get your information about sex offenders from the media, you will assume that all sex offenders victimize strangers, kill their victims, and will always reoffend.

These heuristics produced many false assumptions, which led to the creation of the registry. These false assumptions also provide support, albeit erroneous support, to maintain the registry as is. Let's take a closer look at some of the more salient false assumptions at the foundation of the registry.

False Assumption 1: Most Sex Offenders Sexually Re-offend. There is an assumption that most, if not all, sex offenders will inevitably go on to sexually reoffend. To evaluate this assumption, let's start by looking at the empirical studies that exam sexual recidivism of sex offenders.

The U.S. Department of Justice conducted a study of recidivism rates among sex offenders and non-sexual offenders who were released from state prisons (Langan, Schmitt, & Durose, 2003). Parolees from 15 states were studied, including parolees from the state of Texas. Did the Department of Justice study support the media's portrayal of sex offenders as high-risk offenders who will inevitably recidivate? No.

Langan et al (2003) found that sex offender rates of recidivism are extremely low compared to other types of offenders. In this study, 5.3% of sex offenders released from state prisons were re-arrested for a new sex offense after three years. On the other hand, 68% of non-sex offenders released from state prisons were arrested for a new non-sexual offense during the same follow-up period. Recidivism rates for drug offenders and property offenders were as high as 66.7% and 73.8% after three years, respectively (Langan & Levin, 2002).

At this point, your Availability and Similarity Heuristics have been activated as you are presented with information that contradicts what you thought you knew about sexual recidivism. You might be thinking: *These numbers can't be right. Sex offenders can't have lower recidivism rates than non-sexual offenders. There must be something wrong with the government study.*

To help assuage the cognitive dissonance caused by your use of heuristics, don't consider one study about sex offender recidivism. Consider *all* the studies about sex offender recidivism. Consider a meta-analytic study.

A meta-analytic study is a study that combines data presented in all available articles on a specific topic and comes up with a pooled outcome, or result. Dr. Karl Hanson conducted various meta-analytic studies on sex offender recidivism (Hanson et al., 2002; Hanson, Bourgon, Helmus, & Hodgson, 2009; Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005). The results of Dr. Hanson's meta-analytic studies confirmed that

sex offenders have much lower recidivism rates than what our Availability and Similarity Heuristics would suggest.

Hanson and Bussiere's (1998) study examined decades of data documented in 61 published articles about the re-offense rate of 23,393 sex offenders. These studies followed sex offenders in the community for an average of 5½ years, with a range from 6 months to 23 years. Results indicated that sex offenders reoffend with a new sexual offense at a rate of 13.4%.

In the second study, Hanson and Morton-Bourgon (2005) retained some of the research articles from the 1998 study, eliminated other articles, and added some new articles. The result was a meta-analysis published in 2005 that examined 82 peer-reviewed research articles involving 19,267 sex offenders. These studies followed sex offenders in the community for an average of 6.33 years, with a range from 1 year to 27.5 years. Results indicated that sex offenders reoffend with a new sexual offense at a rate of 13.7%.

Neither the government study nor Dr. Hanson's meta-analytic studies support the media portrayal of sex offenders as inevitably reoffending. To the contrary, the facts contradict the hype.

Let's look at the registry from another perspective. Let's look at the registry and identify the percentage of registrants who are high-risk. A study by Ackerman, Harris, Levenson, and Zgoba (2011) examined 445,127 registrants from 49 states. They concluded that a minority of registrants, 13%, are defined as sexually violent predators. From these data, it would make sense that the lion's share of the monitoring would be reserved for these high-risk cases. Unfortunately, as it stands, states are devoting relatively equal resources to high-risk registrants and all other registrants.

How does the low rate of sexual recidivism of registrants and the low rate of high-risk registrants impact the registry? Simple. The registry is watching a group of individuals, who for the most part have a low risk of a new offense. In other words, the registry forces us to watch people who are unlikely to do what we think they are going to do.

The registry might work if we were able to eliminate from the registry low- and moderate-risk registrants such that only high-risk registrants remained on the registry. This may sound reasonable; however, it is little more than a testable hypothesis worth studying.

False Assumption 2: The Registry Is Designed to Catch the Typical Sex Offender. The notorious sexual crimes that led to the creation of sex offender registries, such as the Jacob Wetterling and Adam Walsh cases, involved predators who were strangers to their victims. The public outcry against these heinous crimes created a perception among policy-makers that sexual offenders should be tracked through a registration system to prevent further sexual violence. It was assumed that by identifying, monitoring, and tracking the whereabouts of offenders, sex offenders would be less likely to reoffend.

Research has consistently shown, however, that the majority of sexual offenses are perpetrated by individuals who are known to the victim (Harrell, 2012; Snyder, 2000; Truman, 2011). Most sexual offenses take place within the home (82.2%) rather than in public settings (6.9%: Colombino, Mercado, & Jeglic, 2009). Putting the sex offender on the public registry does nothing to alert the families of potential victims. Similarly, family members and friends are rarely unaware when their loved one is convicted of a sexual offense.

Since sexual offenses are most likely to occur within the family—as opposed to any other single setting—it is important to consider the impact the registry has upon family members of registrants. Registration can reduce the willingness of family and friends to report intrafamilial abuse (Prescott & Rockoff, 2011). Due to the problems family members incur as a result of registry, family members may be at increased risk for denying the registrant's guilt. This could lead to increased opportunities within the family for the registrant to reoffend.

False Assumption 3: The Registry Will Stop the Majority of New Sexual Offenses. It was assumed that the registry would result in increased apprehension of those individuals committing new sexual offenses. This is a false assumption for two reasons.

First, known sex offenders produce fewer sex crimes than first-time offenders (Langan et al., 2003; Sandler et al., 2008; Vásquez, Maddan, & Walker, 2008). In other words, sex offenders on the public registry commit fewer sex crimes than individuals who are not on the registry.

Let's return to the government study that followed parolees released from 15 state prisons, including in Texas (Langan et al., 2003). In this study 517 sex offenders were arrested for a new sex offense and 3,328 non-sexual offenders were arrested for a new sex offense. Specifically, 3,325 parolees who never before were convicted of a sex offense were arrested for a new sex offense. This means that 92% of arrests for new sex offenses involved criminals with no prior sexual offense history. Only 8% of new sex offenses are caused by individuals who would likely be on the public registry.

It is assumed that we are putting individuals on the registry who are most likely to cause new sexual offenses. The government research shows that if our goal is to stop the majority of new sexual offenses from occurring, we need to put non-sexual offenders on the registry, not sex offenders. Of course, that will never, and should never, happen but it does highlight the futility of the registry.

The second reason that the registry does not lead to increased apprehension is the ever-increasing number of registrants. As the number of registrants increases, the number of full-time law enforcement officers needed to register and track offenders increases. Unfortunately, law enforcement registration offices tend to be under-funded and understaffed. As a result, the information on sex offender registries is often incomplete or inaccurate (Jones, 2008; Wagner, 2011; Wang, 2014). Over half of registrants surveyed in Florida reported their information listed on the state registry website to be inaccurate (Levenson & Cotter, 2005a), and nearly half were not living at their registered address or were incarcerated or deceased (Payne, 2005). In Kentucky, nearly 25% of registrants' listed addresses were incorrect (Tewksbury, 2002). Worse, in California in 2003, registry officials lost information on 33,000 registrants (Tewksbury & Lees, 2007).

Researchers have concluded that enough information was either missing or erroneous that the registry could not be considered an effective tool in protecting the safety of the public (Tewksbury, 2002; Tewksbury & Lees, 2007). Likewise, the ability for state registry officials to update and maintain accurate databases and properly inform the public of the whereabouts of local sexual offenders has been frequently called into question (Jones, 2008; Levenson et al., 2007; Wagner, 2011). Current policies requiring all new sex offenders to register will result in an ever increasingly unwieldy and ineffective registry.

False Assumption 4: The Public Will Use the Registry to Protect Their Children. It was assumed that once equipped with information about sex offenders in the neighborhood the public would be motivated to protect themselves and their families in order to avoid becoming victims. Research has demonstrated, however, that registration has a limited impact on protective behaviors (Sample, Evans, & Anderson, 2011).

Protective behaviors have been defined as action taken to reduce the likelihood of criminal victimization of oneself (Bandy, 2011). In general, there are two types of protective behaviors: self-avoidant behaviors (e.g., avoiding unsafe areas) and self-defensive behaviors (e.g., carrying a weapon). Recent studies have shown there to be no significant relationship between receiving notification about a local sexual offender and the adoption of self-protective behaviors (Anderson & Sample, 2008; Bandy, 2011; Beck, Clingermayer, Ramsey, & Travis, 2004). Further, any protective efforts may be misguided as parents may emphasize stranger perpetrators rather than training children to recognize the more common scenario of abuse within the home (Truman, 2011).

False Assumption 5: The Registry Is a Good Way to Punish a Sex Offender, and Sex Offenders Should Be Punished Forever: There are those in the criminal justice system and the public who think that sex

offending is such a horrific crime that sex offenders need to be punished forever, and the registry is a good way of punishing sex offenders. Closely related to this assumption is the assumption that the lifelong punishment of the registry provides victims of the registrants with some additional measure of justice. Let's consider the various ways in which these assumptions are wrong.

First, use of the registry as punishment is illegal, and the U.S. Supreme Court has said so (*Smith v. Doe*, 538 U.S. 84, 2003). The U.S. Supreme Court has said that the only reason for the registry is to protect the safety of the public. The U.S. Supreme Court has said that if the reason of the registry was to punish, the registry would be illegal. There are no provisions in the law for additional punishment of sex offenders or nonsexual offenders beyond that handed down at sentencing.

Second, the registry can re-victimize victims. For example, using information readily available on the public registry website—such as the age of the victim and the disposition date—it is easy to figure out if the registrant's victim could be a family member. This could lead to victims being the subject of gossip. Worse, it could lead to someone directly questioning a victim, e.g.: *"I see your father was convicted of a sexual offense against a 10-year-old girl, in 2002. Weren't you about 10 years old in 2002?"*

Third, not all victims of registrants want the registrant on the public registry, especially if the registrant is a family member (Craun & Simmons, 2012). The victim may see how other family members are suffering because of the registry. These victims may even blame themselves for their family's suffering. This is yet another way that the registry re-victimizes victims.

Fourth, while trying to advocate for the registrant's victim, advocates of the registry risk creating new victims. Recall the research that was cited earlier in this article that shows registration is not associated with reducing re-offense but it has the potential to promote reoffending. Creating many new victims while advocating for one known victim, who already has justice through our court system, is not safe or reasonable.

The registry is not having its intended effect, and it is creating many harmful unintended consequences. Can anything be done to fix the registry? It is possible that deregistration is one way to begin fixing the registry. Other suggested avenues of registry reform are offered in the conclusion of this article.

Deregistration

In Texas, deregistration is defined as removing a registrant from the public sex offender registry. In 2005, during the 79th Regular Session of the Texas Legislature, House Bill 867 was passed, and it added Subchapter I, Articles 62.401 to 62.408 to the Texas Code of Criminal Procedure. This created the potential for the deregistration of some registrants from the public registry (CSOT, 2010).

If this is the first time you have heard of deregistration, it is first helpful to identify what deregistration *is not*. If an individual is removed from the registry:

- It does not remove the individual from nonpublic law enforcement registries.
- It does not remove DNA from law enforcement registries.
- Deregistration does not affect probation or parole status. Even if a registrant is allowed to deregister while still on supervision, the registrant must complete his or her term of supervision.
- Deregistration cannot be used to appeal or expunge a sex offense.
- The sex offense that caused the person to register will still be part of the individual's criminal record, so the sex offense shows up when he or she applies for jobs.
- Deregistered individuals will continue to be ineligible for jobs with children.
- Deregistration is not publicly funded. If a registrant wants to deregister, the individual must pay for his or her own deregistration.
- Any registrant can file an application for deregistration, but the court that sentenced the registrant

makes the final ruling on whether to approve or deny deregistration.

The sole function of deregistration is the removal of the individual's information from the public registry. The registrant benefits by obtaining relief from the registry, which could be associated with a greater chance of creating a prosocial life, thus reducing risk for re-offense. The public similarly benefits by having a registry that consists of only high-risk registrants, which may be a more worthwhile endeavor in protecting public safety. Until we subject this hypothesis to empirical study through systematic deregistration, the supposed effects remain conjecture.

There are three steps to the deregistration process (CSOT, 2017). Below is an overview of the three steps. There is no way to document all nuances of the deregistration process, but for those who want to keep their bearings as they go through a sometimes-befuddling deregistration process, this overview may help you keep on course.

STEP ONE: Submit an Application to the Council on Sex Offender Treatment. To begin the deregistration process, a registrant must submit an application to the Council on Sex Offender Treatment (CSOT). The application can be found on the deregistration page of the CSOT website (CSOT, 2017).

The registrant can download the two-page application form from the CSOT website (CSOT, 2017). There is talk about simplifying this form, but at this time the two-page application form remains. The first page is a fill-in-the-blank form, which requires the registrant to provide demographic information, offense information, and attorney of record. The second page is a list of supporting documentation that the registrant must submit:

1. Order of Conviction/Deferred Adjudication Order;
2. If the reportable conviction or adjudication involved a minor, the applicant must provide a copy of one of the following documents, which indicates the age of the victim at the time of the offense: (a) Indictment; (b) Offense Report; or, (c) Probable Cause Affidavit;
3. Current Criminal History Background Checks. The registrant must provide two criminal background checks: (a) Texas Department of Public Safety Criminal History; and, (b) Federal Bureau of Investigation Criminal History;
4. Cashier's Check or Money Order in the amount of \$50, made payable to the Council on Sex Offender Treatment.

CSOT also allows the registrant to include, if he or she wishes, two non-mandatory supporting documents: (a) proof of successful completion of sex offender treatment; and (b) proof of successful completion of probation or parole. It is unclear why CSOT has suggested that these documents be included because CSOT cannot consider these documents when determining if a registrant is eligible for deregistration. These documents might be of some importance at the third and final step of the deregistration process (i.e., hearing on the petition to deregister), but these documents are superfluous at this step in the deregistration process. We recommend that registrants do not submit superfluous documents.

When CSOT receives an application, the application is logged and reviewed to determine if the application is complete. Incomplete applications are returned to the registrant. Complete applications are forwarded to the CSOT general counsel for review to determine if the registrant is eligible for deregistration. Every case is unique, and application of the deregistration eligibility guidelines is not always a simple matter. We would like to offer a list of eligibility criteria based upon what we have seen, with the recognition that each registrant is evaluated on an individual basis.

- **Convicted in a Texas Court:** In general, individuals who were convicted in a Texas court are eligible

to apply for de-registration. If the registrant was convicted in a federal or military court, even if it was in Texas, the registrant is usually not eligible to deregister. Also, if a registrant was convicted in a state other than Texas, the registrant is usually not eligible to deregister.

- **One Count or One Offense:** In general, individuals who have one count of a sexual offense are eligible for deregistration. Individuals with two counts or two sexual offense convictions are generally not eligible to deregister, but we have seen one exception. We have seen some individuals with two counts of child pornography be designated as eligible for deregistration at this stage of the process.
- **Type of Offense:** The types of offenses considered eligible for deregistration is a muddled area. Based upon what we have seen, some offenses are eligible for deregistration and some are not (CSOT, 2010).
 - **Offenses Eligible for Deregistration:** Compelling Prostitution, Compelling Prostitution (victim under 17 years old), Indecent Exposure (two or more convictions might be able to deregister), Unlawful Restraint (victim under 17 years old), Indecency with a Child by Exposure, Possession or Promotion of Child Pornography, Online Solicitation of a Minor, Sexual Performance of a Child, Indecency with a Child (victim 13 to 17 years old), and any attempts, conspiracies, and solicitations of any offense listed above. Aggravated Sexual Assault of a Child and Aggravated Sexual Assault can sometimes be eligible for deregistration and sometimes not.
 - **Offenses Typically Not Eligible for Deregistration:** Aggravated Kidnapping with Intent (adult or victim under 17 years old), Burglary with Intent, Continuous Abuse of a Child, Sexual Assault, Prohibited Sexual Conduct, Indecency with a Child (victim under 13 years old), or any attempts, conspiracies, and solicitations of these offenses are not eligible for deregistration.
- **No New Offenses:** The registrant must not have been convicted of any sex offense including misdemeanors during the required registration period. The registrant must not be convicted of any offense for which imprisonment for more than one year may be imposed during the required registration period.
- **Length of Registration:** If the registrant is required by Texas law to register for a period of time longer than the same offense would be required to be registered under federal law, the registrant is generally eligible for deregistration. This is a statutory requirement, however; actual determination of the comparison between Texas and Federal required lengths of registration is governed by the Texas Department of Public Safety (TDPS). TDPS has created a chart that is supposed to identify registrants who are eligible for deregistration based upon length of registration period. The current chart is under revision because it is full of errors. A new chart is to be released soon, but there are concerns in the legal community that this chart is at risk of containing just as many errors, if not more.

Upon completing a review of the deregistration application, the CSOT general counsel deems an application for deregistration approved or denied. Registrants are notified via mail about the results of the CSOT screening. For those found ineligible, deregistration is denied and the process ends. Those who are found eligible proceed to the second step in the process, which is the completion of a deregistration evaluation, at the applicant's expense, by one of the 22 approved deregistration specialists in Texas (CSOT, 2017).

STEP TWO: Deregistration Evaluation: If CSOT grants the registrant his or her initial approval for deregistration, the next step is to seek out and complete a deregistration evaluation. The State of Texas has approved only 22 deregistration evaluation specialists. The registrant must obtain the deregistration evaluation from one of these 22 deregistration evaluation specialists. After the applicant receives initial approval for deregistration, CSOT shares with the applicant the names and contact information for the approved deregistration evaluation specialists.

From 2005 to 2011, CSOT studied various methodologies to identify registrants who would be appropriate for removal from the public registry (CSOT, 2010). In the end, CSOT adopted a risk assessment methodology that relied upon the use of standard risk assessment instruments that have been published in

peer-reviewed scientific journals, are widely accepted by the scientific community, and have a known error rate.

The risk assessment methodology adopted by CSOT relies upon the use of three types of risk assessment instruments: the sexual reoffense risk instrument, nonsexual reoffense risk assessment instrument, and an instrument to determine risk of psychopathy.

In addition to specifying the risk assessment methodology, CSOT also established risk criteria, which are used to determine who is and who is not eligible for deregistration. CSOT determined that low- and medium-risk registrants would be eligible for deregistration and high-risk registrants would not be eligible for deregistration. Below is a listing of the risk instruments, along with the risk assessment deregistration criteria:

- **Sexual Reoffense Risk Assessment.** For registrants whose only crime was related to child pornography, the Matrix 2000 is used to assess risk for sexual reoffense. Individuals who are rated as High or Very High Risk are not eligible to deregister.
?For registrants whose sex crime was not limited to child pornography, the Static-2002 is used to assess risk for sexual reoffense. A score of 9 or higher is considered high-risk. Individuals who obtain a score of 9 on the Static-2002 are ineligible for deregistration.
- **General Criminality Risk Assessment.** All registrants are rated on the Level of Service Inventory?Revised to determine the registrant?s risk for general criminality, e.g., nonsexual crimes. A score of 16 or higher is considered high-risk. Individuals who obtain a score of 16 or higher on the LSI-R are ineligible for deregistration.
- **Risk for being a Psychopath:** All registrants are rated on the Hare Psychopathy Checklist?Revised to determine if the registrant is a psychopath. A score of 30 or higher is used to classify an individual as a psychopath. Individuals who obtain a score of 30 or higher on the Hare PCL-R are considered high-risk and ineligible for deregistration.

To be eligible to deregister, a registrant cannot be rated high-risk on any of the risk assessment instruments. A registrant can be rated as medium-risk on all the risk instruments and still be able to deregister. On the other hand, if a registrant is rated as high-risk on any one of these instruments, even if the registrant is rated as a low-risk on the other two, the registrant cannot deregister.

There are two sexual reoffense risk instruments listed in the table above: the Static-2002 (Hanson & Thornton, 2003) and the Matrix 2000 (Thornton et al., 2003). The Matrix 2000 is used with registrants whose only sexual offense is a child pornography offense. The Static-2002 is used to determine risk for all other registrants. Only one sexual re-offense risk assessment instrument is used in the evaluation of a registrant.

In addition to ratings on risk instruments, part of the deregistration methodology includes a discussion of the registrant?s sexual offense as well as what he or she learned in sex offender treatment (if the registrant did participate in sex offender treatment). A registrant does not have to have participated in or completed sex offender treatment to be eligible for deregistration. Still, it is important to pay attention to the way the registrant talks about his or her sexual offense. If there is any portion of the deregistration evaluation that the registrant can undermine, it is the discussion of the sexual offense.

Deregistration is for guilty individuals. When a registrant minimizes or denies his or her sexual offense, it can derail the deregistration process. If the registrant tries to use the deregistration process to prove his or her innocence, the registrant?s attempt to deregister will be doomed. A registrant does not have to be innocent to deregister, but it helps if the registrant is honest and open, shows empathy, and accepts responsibility for his or her sex offense.

Once the evaluation is completed, the deregistration evaluation specialist writes a report and submits it to

CSOT. A CSOT clinical board member reviews the report to ensure there are no errors with regard to the risk assessment portion. If there are errors, the report is sent back to the deregistration evaluation specialist. If there are no errors in the report, the report is stamped and certified and sent to the registrant or the registrant's attorney.

STEP THREE: Petition the Court. Upon successful completion of the first and second steps of the deregistration process, the registrant is ready for the third and final step of the deregistration process: petitioning the court to deregister. The petition is heard in the court where the registrant was sentenced for his or her original sexual offense.

The court has complete discretion with regard to the petition hearing. The judge does not have to schedule a hearing if he or she does not want to do so. If the court does hold a hearing, the court has complete discretion with regard to the ultimate decision. There is nothing in the statute to guide the court. The court may even deny deregistration to a registrant who has met all requirements for deregistration.

If the court denies deregistration, there is no statutory basis for filing an appeal. On the other hand, if a registrant's petition is denied, there is nothing in statute that prevents the registrant or the registrant's attorney from refiling the petition. In fact, there have been instances where the court had problems with a registrant in the first hearing but granted the petition in a second hearing after the registrant or registrant's attorney had addressed the concerns the court had during the first hearing of the petition.

In our opinion, the third step of the deregistration process requires some good lawyering. The attorney's work on the third step of the deregistration process should begin long before the petition is filed. It is not uncommon for the district attorney's office and the court to be completely unfamiliar with deregistration. The attorney will need to educate the court and district attorney's office about deregistration. Additionally, it is recommended that the attorney create and give a deregistration packet to both the court and district attorney, providing information about deregistration and the individual seeking deregistration.

There are companies sending letters to registrants offering to help the registrant through the deregistration process. Some of these companies might be legitimate and helpful. Others are clearly not helpful because they mislead registrants. For example, some companies tell the registrant there is only one deregistration specialist the registrant can or should go to. This is not true. The registrant, or the registrant's attorney, is free to choose any of the 22 deregistration evaluation specialists approved by CSOT. Additionally, some companies tell the registrant that he or she must submit to a polygraph. A polygraph is not part of the deregistration process, and there is no way for a deregistration specialist to include polygraph data in a deregistration evaluation report. Attorneys and registrants alike should be careful when making decisions about using third-party deregistration services.

If the court approves deregistration, the registrant or the registrant's attorney sends the court order to the Texas Department of Public Safety (DPS). DPS is required to remove the individual from the public registry, but that does not mean that traces of the individual's identity as a registrant will be removed from the internet.

There are companies that maintain information about the registrant's sex offense and publicize this information on privately owned websites. These companies do not have to remove the registrant from the private, for-profit registries just because a judge signed an order to remove the registrant from the public registry. The registrant or registrant's attorney must contact these internet-based companies and request the individual be removed from the website. To no great surprise, these companies sometimes require a fee to remove someone from their registry. It is part of their business model.

Recommendations and Conclusions

The Texas Legislature would never do anything to decrease public safety. The Texas Legislature determined that deregistration does not decrease public safety and may, in fact, increase public safety?which is why the deregistration legislation was passed.

Deregistration was intended to fix some of the problems with the registry. Although deregistration is an important step toward registry reform, if the efforts stop at solely removing certain individuals from the registry, larger and more serious problems inevitably arise. We would like to offer some recommendations that could improve the current state of the registry.

1. All Potential New Registrants Must Be Rated High-Risk. The number of registrants in Texas will exceed 100,000 at some point within the year. Deregistration does nothing to stem the tide of new registrants, but there is a way to limit the number of new registrants.

It is recommended that registration statute be amended to require that an individual convicted of a sex offense undergo a risk assessment prior to being placed on the registry. Further, it is recommended that only individuals rated as high-risk be placed on the registry.

This proposed change puts a great deal of pressure on local courts. In an effort to remove some of the pressure from local courts, it is recommended that the registration statute be amended to create a checks-and-balance system. We would like to offer the following recommendations: (a) only Licensed Sex Offender Treatment Providers should be allowed to conduct risk assessments, and CSOT should be given the power to determine if Licensed Sex Offender Treatment Providers should receive special certification or permission to conduct these risk assessments; (b) once a risk assessment is completed, the risk assessment must be sent to CSOT for review and this review is used to determine if the risk assessment was conducted properly; (c) the courts may only make rulings regarding registration of individuals based upon risk assessment reports that have been reviewed and approved by CSOT; and (d) the defendant is responsible for paying the fees and costs associated with the risk assessment evaluation, and the court may require the defendant to pay this fee, along with other fees, as a condition of probation?e.g., like other fees, the deregistration evaluation fee can be paid over the term of probation. If these changes were made, it would greatly reduce the number of registrants added to the registry. In the long run, it might produce a more focused registry that contains only high-risk registrants, which might have a positive impact on public safety.

2. Remove Any Reference to Federal Law in the Deregistration Statute. The current deregistration statute in Texas law has references to federal law?i.e., the Sex Offender Registration and Notification Act (SORNA). Texas opted out of adopting SORNA, most likely due to the high cost of implementation. States that did not adopt SORNA lost 10% of the Byrne Grant Highway Federal Funds; however, the cost of implementing SORNA neared millions more dollars than would be lost by losing federal funds. Texas is one among many states that did not adopt SORNA.

As of 2017, only 18 states have substantially implemented SORNA's requirements (SMART, 2017). States that did adopt some or all of SORNA have tremendously increased budgets for the management of sex offenders, which undoubtedly diverts funds from schools, highways, and other areas of need.

Since Texas did not adopt SORNA, it is unreasonable to have a reference to SORNA in the Texas deregistration statute. The addition of the reference to SORNA has complicated registration and put an undue burden on governmental agencies, not to mention that including a reference to SORNA allows the federal government to have the final say in Texas affairs. We recommend that the Texas deregistration statute be altered to eliminate any mention of federal law.

3. Get the Judiciary Off the Hook. One set of elected officials, the legislature, has created a law that puts another set of elected officials, the judiciary, in the position of removing individuals from the registry. To appreciate how unfair this is to the judiciary, all one has to do is to go to the capital during a legislative session and testify in a criminal justice committee hearing and suggest some tweak to the

registration laws. The universal response from legislators will be: "I can't do that. How will I explain that to my constituents?" Legislators know what judges know. One cannot win re-election if his or her opponent's campaign is based upon the slogan, "The incumbent is soft on sex offenders."

"It is unfair to give judges such a public role in the deregistration process, when their role could be eliminated and replaced by a simple administrative procedure. We recommend that the current registration statute be altered to allow CSOT and the Texas Department of Public Safety (TDPS) be responsible for the last step of the deregistration process.

"Specifically, we recommend that when CSOT receives a completed deregistration evaluation report, the report is examined for two criteria. First, the report should show that the evaluation was done correctly and has included the appropriate risk instruments. Second, CSOT should verify that the registrant meets the risk levels acceptable for de-reg-is-tration. If the risk assessment was done correctly and the registrant meets the risk assessment criteria for deregistration, then CSOT should inform TDPS. Once TDPS has received approval from CSOT for the removal from the registry, the registrant should be removed from the registry.

4. Family Chaperon Training: The public registry was developed with an intent to increase public safety, but the research shows it has been largely unsuccessful (Letourneau & Armstrong, 2008; Prescott, 2012; Wakefield, 2006; Zevitz, 2006). On the other hand, chaperon training has the chance of increasing public safety by targeting the more common scenario of abuse against those familiar to the offender.

"Chaperon training allows family members of sex offenders to meet with a Licensed Sex Offender Treatment Provider (LSOTP) and receive training about how to keep children safe around the sex offender (McKay, 2002). When modifying the registration statute, it may be wise to add language that would require a sex offender not have contact with an underage family member, unless the parent or guardian of the minor has completed chaperon training.

"The language of the law should *not* require family members to undergo chaperon training. Rather, the law should mandate that registrants refrain from contact with children whose parents or caretakers have not undergone chaperon training. By putting the requirement on the registrant and not the registrant's family, it gives the registrant's family members a great deal of discretion and control over if, and when, to allow contact between the registrant and any family member who is a child.

5. New Legislation Requiring Removal of Individuals from Private Registries: This recommendation is likely a difficult one to enact, given the constitutional right of free speech. However, it only makes sense for entrepreneurs to remove individuals from their private registry if the individual is removed from the public registry. Given the potential threat to public safety caused by any registry, private or public, it is possible that needs of public safety may outweigh the entrepreneur's claims to free speech.

Albert Einstein was famous for his thought experiments. In fact, it has been said that the seeds of Einstein's theory of special relativity were created as a result of a thought experiment he conducted at age 16. We would like to conclude with a thought experiment:

Imagine you are the director of the Centers for Disease Control and Prevention. As the director, it is your job to approve, or reject, the use of vaccines. Imagine that you receive a dozen reports on empirical studies done on Vaccine X. These studies show that Vaccine X does not prevent Disease X, as it was supposed to do. Worse still, Vaccine X makes patients sick. Not only that, Vaccine X makes family members of the patient sick. As the director of the Centers for Disease Control and Prevention, do you approve or reject Vaccine X for use in the general public?

Obviously, the mind experiment above is a metaphor for the ultimate question about the utility of the public

registry. The public registry hurts registrants and registrants' families and friends. Maybe someone should do something about Vaccine X so more people do not get hurt.

As Daniel Patrick Moynihan famously said, "Everyone is entitled to his own opinion, but not his own facts?" (in Carnes, 1995). Registration has not had the impact on public safety that everyone hoped for. While deregistration is a step in the right direction, the recommendations presented in this paper offer some additional steps that could potentially result in a registry that produces a positive impact on the public. Unless, of course, we just do away with Vaccine X altogether.

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