Ohio Judicial Conference
Policy Statement

POLICY STATEMENT ON CRIMINAL REGISTRIES AND DATABASES

Prepared by

Ohio Judicial Conference Criminal Law and Procedure Committee

EXECUTIVE COMMITTEE

The Executive Committee establishes Judicial Conference policy and adopts resolutions that express judicial consensus.

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What is a Policy Statement?

A Policy Statement describes as objectively and accurately as possible the position of the Ohio Judicial Conference. Typically policy statements are developed by a standing committee of the Ohio Judicial Conference and presented to the full Executive Committee for their consideration. All policy statements are approved by the full Executive Committee of the Ohio Judicial Conference. The Ohio Judicial Conference prepares these statements to clarify and explain the position the Judicial Conference has taken with regard to a particular issue that the Judicial Conference has determined relevant to the administration of justice.

Ohio Judicial Conference
65 South Front Street, 4th Floor
Columbus, OH 43215-3431
Phone: 614-387-9750
Fax: 614-387-9759
www.ohiojudges.org

The last several general assemblies have seen an increase in the number of bills introduced or contemplated by legislators that would create some kind of registry or database of people who have committed various offenses. These bills are often the response of well-intentioned legislators to tragic events that occur in their districts and garner a heightened level of media and public attention. Often mandatory in nature, these proposals require offenders to register based solely on the offense committed, with no regard for the actual likelihood of re-offending or evidence of the risk that person poses to his or her community, and no evidence that use of a registry or database will deter crime or make it easier to solve. The role of the judiciary is also neglected in these processes, favoring a one-size-fits-all-offenders approach to sentencing over allowing judges to utilize their training, expertise, and familiarity with the offender and the facts of the case as well as evidence-based practices to tailor a sentence that will both punish and rehabilitate the offender and effectively promote public safety. When legislators contemplate creating additional registries or databases, they should strive to overcome the moral panic associated with high-profile crimes, and be mindful of the evidence that exists regarding recidivism, the actual effectiveness of registries, the collateral consequences of being on a registry for years if not decades, and the role the judiciary should play in rehabilitating offenders. Judges are in a position to make a significant contribution in determining the risk-benefit analysis for offender registration, and should be seen as a valuable asset in promoting public safety.

High-profile crimes are often the impetus for registry-enacting legislation. Sex-offense cases and tragic, violent events can garner widespread media attention, often leading legislators to seek a fix to a perceived problem with the criminal justice system, so that a similar instance does not happen again. The proposed legislation often represents a response to a public fear and the presumption that a one-off event, however tragic, is likely to happen again under the exact same circumstances. Ohio has seen a number of registries enacted or proposed, often in response to an incident that occurred in a legislator's district. Ohio currently has registries in place for sex offenders, arsonists, and habitual OVI offenders, and bills have been either introduced or contemplated that would expand current registries or create registries or databases for offenses of violence, child abuse, animal abuse, and fights in bars.

Much of the public attention, moral panic, and resulting legislation stem from the idea, or myth, that offenders of one type of offense are all cut from the same cloth and can easily be swept into the same broad category. Terms like "sex offender" or "violent felon" are constructed and applied to all offenders of a particular type of offense. Those terms are strongly associated with media depictions and one-off examples, rather than with reality and evidence. By way of example, the term "sex offender" is given to anyone who has been convicted of a sex-based offense, when in reality, there is no distinct cohort of sex offenders such that all members share universal traits or pose the same risk to society. Sex offenses vary widely, from misdemeanors to horrific felonies. They can be consensual or forced. They can involve physical contact or no contact at all. They can be passive or violent. An offender might target children or may have victimized an adult. And yet labeling all offenders of these crimes into the same group or classification implies that they, or the offenses they committed, are identical in nature.

Evidence differs greatly from public perception, which is often based on misconceptions perpetuated by popular media. Public perception would suggest that strangers pose a greater risk than persons known to us, and that all offenders of a particular crime have the same characteristics, motivations, and proclivity for offending again. The creation of so many offense-based registries implies a narrative that all sex offenders prey on strangers, and that if they have offended once, they will offend again, and therefore a publicly searchable database is a key tool in maintaining public safety. In reality, evidence shows us that sex offenders know their victims: 93% of child sexual abuse victims are family members or acquaintances of the offenders, and 73% of adult victims know their offenders. Additionally, sex offenders are the least likely to reoffend: of offenders of any crime, 62.5-67.5% will reoffend within three years of their release from prison, while only 13.4% of sex offenders will reoffend in that period. Simply put, evidence that registries, like the sex-offender registry, actually keep the public safe simply does not exist.

The Judicial Conference is not taking the position that registries are inherently a bad idea. Rather, if the legislature determines that a registry or database should be adopted, it must be based on evidence rather than moral panic and public fear based on misconceptions. Registries should be adopted only if evidence exists supporting their effectiveness at actually promoting public safety. The primary focus ought to be on whether an offender is likely to reoffend, and not on the specific offense committed. The type of crime committed is not in itself determinative of one's likelihood to reoffend, yet bill after bill contemplated by the legislature is purely offense-based. Offenders should instead be subject to registration requirements when they pose a risk to public safety through their likelihood of reoffending. Research shows that a wide variety of factors, and not simply the offense committed, affect the likelihood of recidivism. A plethora of risk-assessment tools are available that take into account these factors to determine one's likelihood of committing another offense, and these tools are often highly accurate. For example, research shows that for sex offenders, there is a positive correlation between risk-assessment scores and recidivism. Registries based solely on offense fail to take into account the factors that are actually more indicative of one's likelihood to reoffend, and can thus be both under-inclusive and over-inclusive.

In crafting legislation creating new registries and databases, legislators should recognize judges as partners in maintaining public safety, and safeguard their role in the process. Ohio's judges are best situated to assess offenders on a case-by-case basis to determine their risk of reoffending and whether inclusion on a registry or database would effectively promote public safety, reduce recidivism, and rehabilitate offenders. Judges already can, and do, utilize various risk-assessment tools in crafting appropriate sentences. Further, judges have access to a greater amount of information to determine the appropriate course of action: an offender's criminal history, relationship to the victim, the nature of the offense, the degree of the offender's culpability, the harm suffered by the victim, the level of remorse displayed by the offender, the offender's family and support network, and any physical or mental health and addiction issues the offender may be suffering. If the legislature deems it necessary to create additional registries or databases, rather than a blind,

offense-based application, judges should be given the discretion to determine, based on the results of risk assessment, whether registration is appropriate for that individual.

Legislative solutions must overcome the public fear and panic that has steered the conversation pertaining to registries and databases of criminal offenders. It is important that legislators recognize judges for the roles they serve and their unique ability, and duty, to look at each offender on a case-by-case basis, and the evidence surrounding that offender's particular circumstances and the circumstances of the offense, to determine whether including that person on a registry or database will effectively maintain public safety and rehabilitate the offender, or if doing so will only cause more harm than good.

Special thanks to Judge Mary Katherine Huffman, Montgomery County Court of Common Pleas, whose article Moral Panic and the Politics of Fear: The Dubious Logic Underlying Sex Offender Registration Statutes and Proposals for Restoring Measures of Judicial Discretion to Sex Offender Management, *4 Va. J. Crim. 241 (2016), served as the framework of this Policy Statement.*