

The Department of Justice comment on the provisions of TD 5 have just come to my attention. They are unfortunately misleading in suggesting the TD 5 recommendations rely on “discredited research”. To the contrary, what is discredited by the clear and rather overwhelming consensus of the peer-reviewed scholarly work are the central factual assumptions, repeated here by DOJ, that are usually offered to justify the registry system.

The key question, of course, is whether the registry system contributes in any important way to reducing the incidence of sexual offending. Three kinds of studies establish its limited value in furthering this obviously worthy goal. One group of relevant studies finds that the public identification of registrants as “sex offenders” through tools like websites and mailings to neighbors contributes little or nothing to reducing the prevalence of sexual offending.<sup>1</sup> A second group finds that 95% or more of all those arrested for sexual offenses are first offenders necessarily unaffected by the registry regime rules (and this was the case before there was any registry regime).<sup>2</sup> The registry regime’s apparent premise—that a large share of sexual offenses are committed by a small group who offend again after completing a sentence for an earlier sexual conviction—is thus mistaken.<sup>3</sup> Finally, a third group of studies explain why prior offenders constitute such a small proportion of those arrested for sexual offenses: their overall re-offense rates are far lower than usually assumed. There’s no doubt that some registrants are more likely than other felons to commit a sexual offense, but in fact most of them never do. This is true whether “re-offense” is defined as a new arrest for a sexual offense, or a new conviction for one. And as with released felons generally, the likelihood that they will re-offend declines rapidly over offense-free time following release from custody. The typically lengthy registration terms cannot be reconciled with these data.

The DOJ’s objection that some parts of the registry regime, such as restrictions on where registrants may live, are not required by federal law or by all state laws, is hardly a defense of retaining them in the many American jurisdictions (state and local) that do impose them. A study commissioned by the federal SMART office agreed they are ineffective. One would hope DOJ would endorse their abolition.

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<sup>1</sup> Amanda Y. Agan, *Sex Offender Registries: Fear without Function?*, 54 THE JOURNAL OF LAW AND ECONOMICS 207–239 (2011); Jeff A. Bouffard & LaQuana N. Askew, *Time-Series Analyses of the Impact of Sex Offender Registration and Notification Law Implementation and Subsequent Modifications on Rates of Sexual Offenses*, 65 CRIME & DELINQUENCY 1483–1512 (2019); SARAH NAPIER ET AL., *What impact do public sex offender registries have on community safety?* 20 (2018); Joanne Savage & Casey Windsor, *Sex offender residence restrictions and sex crimes against children: A comprehensive review*, 43 AGGRESSION AND VIOLENT BEHAVIOR 13–25 (2018); Kristen Zgoba, Bonita M. Veysey & Melissa Dalessandro, *An Analysis of the Effectiveness of Community Notification and Registration: Do the Best Intentions Predict the Best Practices?*, 27 JUSTICE QUARTERLY 667–691 (2010).

<sup>2</sup> Sarah W. Craun, Catherine A. Simmons & Kristen Reeves, *Percentage of Named Offenders on the Registry at the Time of the Assault: Reports From Sexual Assault Survivors*, 17 VIOLENCE AGAINST WOMEN 1374–1382 (2011); Jeffrey C. Sandler, Naomi J. Freeman & Kelly M. Socia, *Does a watched pot boil? A time-series analysis of New York State’s sex offender registration and notification law.*, 14 PSYCHOLOGY, PUBLIC POLICY, AND LAW 284–302 (2008).

<sup>3</sup> ANDRA TETEN THARP, *Key Findings: Rethinking Serial Perpetration* (2015), <http://nsvrc.org/publications/nsvrc-publications-research-briefs/key-findings-rethinking-serial-perpetration>. One arena in which this debate has taken place is the college campus. An analysis of the two largest longitudinal studies of college men’s sexual violence, based on interviews with them upon arrival in college and during the four subsequent spring semesters, found that 10.8% of the men reported behavior that met the FBI definition of rape, before or during their college years, but that relatively few repeated the offense in a later year. Kevin M. Swartout et al., *Trajectory Analysis of the Campus Serial Rapist Assumption*, 169 JAMA PEDIATR 1148 (2015). In other words, the campus problem is not so much that a few college men are repeat sexual offenders, as that a disturbingly large percentage have offended at least once. Prevention strategies can be thus potentially far more effective in reducing sexual offending than are strategies that focus primarily on those already caught.

It is important to keep in mind that the registry is not and cannot be justified or explained as punishment for the crime that triggers its imposition. Everyone required to register has already been punished. No similar regime has ever been imposed on any other group of law-abiding former felons who have fully served the sentence for the crime they committed years earlier. No similar regime is part of the law of any other western democracy. There is surely no doubt that the existing registry regime makes it more difficult for those subjected to it to re-enter civil society and become productive citizens.

The time available before postings close keep me from commenting more fully here. I provide a fuller review and discussion of the research in this area in an article forthcoming in the University of Pennsylvania Journal of Law and Public Affairs, and available at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3817201](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3817201).