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Hon. Daniel J. O'Donnell
New York State Assembly
Chair, Correction Committee
Legislative Office Building 526
Albany, NY 12248

Re: A.8503/S.6066, in relation to sex offender registration and residency restrictions

Dear Assembly Member O'Donnell:

On behalf of the New York City Bar Association,[1] I write to convey our opposition to legislation currently pending before the Assembly Correction Committee. The bill is A.8503/S.6066 entitled "AN ACT to amend the correction law, in relation to sex offender registration and residency restrictions." Passage of this legislation would both impede public safety and violate the due process rights of individuals who successfully served their criminal sentences decades ago. We urge you and your committee to reject it.

A.8503/S.6066 has two sections that affect individuals currently registered as sex offenders who have been found by courts to be least likely to re-offend, i.e. "Level One" registrants. The first extends the duration of sex offender registration for most Level One registrants from 20 years to 30 years or life. The second overrules Court of Appeals precedent in order to permit local governments to restrict where sex offenders can live on a municipality-by-municipality basis. The results of each of these proposals would be detrimental to public safety and disastrous for the registrants themselves.

I. EXTENSION TO UP TO LIFETIME REGISTRATION FOR LOW-RISK INDIVIDUALS

A. Background

When the Sex Offender Registration Act – the New York version of "Megan's Law" – was passed in 1996, low-risk individuals were required to register with the state for ten years.

[1] This report was developed by a working group of members of the Criminal Courts, Criminal Justice Operations, Criminal Law, and Corrections and Community Reentry Committees. The committees include members from a broad spectrum of legal practices within the criminal justice field.

People pleading guilty to misdemeanors and other non-violent sexual offenses were routinely advised by counsel and the courts that they would be off the registry in a decade. Such individuals also had the right to petition to be removed from the registry, but that right was abolished four years later. Then, in January 2006, with virtually no public debate, the Legislature extended the duration of registration to twenty years.[2] Although that amendment gave rise to grave concerns under the Ex Post Facto and Due Process Clauses of both the New York and U.S. Constitutions, the courts have rejected repeated constitutional challenges, thereby forcing individuals deemed by the courts to be the least dangerous to endure another decade of the burdens and stigma of sex offender registration.

B. The Pending Legislation

The current proposal would compound the harm done in 2006 by extending the duration of sex offender registration to as long as life for the least dangerous individuals on the registry. Those affected immediately have not only been deemed low risk by a court, but in almost all cases have remained in their communities for at least twenty years without committing another sex crime (the law in 1996 applied to people who had committed crimes earlier but were still in prison or on probation or parole).[3] The "justification" for the proposal set forth in the bill jacket cites only an unnamed study and relies on the unsupported assumption that Level One registrants, who have already been found by a court to be low- risk, are in fact sexual predators.

C. Passage of A.8503/S.6066 Would Undermine Public Safety and Needlessly Harm Low Risk Registrants

Extending the duration of registration in this manner would have a detrimental impact on public safety because such extension would require spending additional law enforcement resources on those deemed least dangerous. The proposed law continues to curtail the rights, activities and civic participation of individuals who have been low- risk and law-abiding for more than twenty years, while at the same time stoking public fear – all without any benefit to crime prevention.

The proposal is also unfair to registrants who have obeyed the law for at least two decades, put their crimes behind them, and worked to rebuild their lives. While registration information for Level One individuals is not easily available online, these low-risk registrants must return a form to the state every year, go to the police station to have their pictures taken every three years, and advise the state when they move, take a new job, start at a new school, or open a new internet account. The penalty for any failure to register is a felony, even if the underlying crime more than twenty years ago was a misdemeanor. Internet identifiers are forwarded to online service providers and can be used to deny access to websites and social media. Registrants may be barred from receiving insurance reimbursement for certain

[2] Laws 2006, c. 1. This legislation was introduced on January 17, 2006 and enacted the next day on January 18.

[3] Scientific analysis of recidivism risks show that the risk is highest during the first few years following release and decreases significantly the longer individuals remain sex-offense free in the community. See e.g. R. Karl Hanson, Andrew J.R. Harris, Leslie Helmus, David Thornton, "High Risk Sex Offenders May Not Be High Risk Forever," 29 J. Interpersonal Violence 2792-2813, (Oct. 2014), available at http://jiv.sagepub.com/content/29/15/2792. Additional scientific analysis of recidivism risks can be provided upon request.

medications or holding certain jobs. In some municipalities, their pictures are literally posted on lamp posts when they move to town.

As the Supreme Court wrote in Landgraf v. USI Film Products, 511 U.S. 244, 266 (1994), retroactive legislation like this is fraught with risk: "The Legislature's unmatched powers allow it to sweep away settled expectations suddenly and without individualized consideration. Its responsivity to political pressures poses a risk that it may be tempted to use retroactive legislation as a means of retribution against unpopular groups or individuals." Id. We urge the Committee to avoid this result by rejecting A.8503/S.6066.

II. LOCAL RESIDENCY RESTRICTIONS

Earlier this year, the Court of Appeals in People v. Diack, 24 N.Y.3d 674 (Feb. 17, 2015), held that local laws restricting where sex offenders can live are pre-empted by the state's statutory scheme governing the same field. Section 3 of A.8503/S.6066 proposes to reverse that holding. By allowing individual municipalities to enact specific residency restrictions in addition to those already set by state law, the provision would have a disastrous effect both on individuals and communities: registrants would risk arrest for traveling to municipalities with restrictions on their movements; municipalities could be encouraged to compete to enact the most exclusive restrictions, forcing some residents from their homes; and regions would return to the situation where residents of certain counties are tightly concentrated in small geographic areas far from municipal services, jobs and family.

While the current structure itself is far from perfect, permitting individual municipalities to enact a hodgepodge of conflicting rules would be the worst possible outcome. The bill does not specifically address, and therefore lets stand, restrictions such as those in certain municipalities barring all sex offenders from public parks and other facilities. Passage of the bill could encourage municipalities to enact more of these rules. Local residency and related restrictions are unnecessary because virtually all sex offenders are subject to a term of probation or post-release supervision, during which a judge or parole official determines, on an individualized basis, appropriate residency circumstances. Allowing local governments to materially restrict where sex offenders can live invites a race to the bottom, dividing families, concentrating such individuals into small geographic areas, undermining public safety, and unnecessarily restricting individuals' freedom.

III. CONCLUSION

Because its passage is inconsistent with protecting the public from crime and needlessly infringes on the rights of people who have committed no crime for decades, we oppose A.8503/S.6066.

We remain available to provide further information or consult as you see fit.

Respectfully,

Elizabeth Kocienda

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