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REPORT ON LEGISLATION BY THE CORRECTIONS AND COMMUNITY REENTRY COMMITTEE

A.9505-A / S.7505-A (Budget Article VII) – Part II
AN ACT to amend the social services law, the executive law, and the penal law, in relation to prohibiting sex offenders from being placed in shelters used by families with children and from entering within one thousand feet of a kindergarten or pre-kindergarten facility or institution

THIS PROVISION IS OPPOSED

INTRODUCTION

This report is respectfully submitted by the Corrections and Community Reentry Committee ("the Committee") of the New York City Bar Association. The City Bar is an organization of over 24,000 members dedicated to improving the administration of justice. Members of the Committee include prosecutors, public defenders, attorneys in private practice, and public policy professionals who analyze laws and policies that affect the criminal justice system in New York.

We write to oppose the proposed amendments, submitted as a provision of Article VII legislation necessary to implement the State Public Protection and General Government Budget for the 2018-2019 state fiscal year, to the social services law, the executive law, and the penal law that would further restrict where people on New York's sex offender registry are allowed to live. The amendments target both Level 3 registrants already subject to the Sexual Assault Reform Act ("SARA"), and Level 2 and 3 registrants in general, make residency in New York City virtually impossible. Our Committee previously urged the Legislature to reform the residency restrictions enacted as part of the 2005 amendments to SARA, which now prohibits many New Yorkers convicted of sex-related offenses from living within 1000 feet of a school.[1] We concluded that these restrictions, applied without any individualized assessment of the need for them, were of questionable constitutionality and utility and may, in fact, decrease public safety by cutting people off from stable housing and social support networks.[2] Increasing these

[1] Under the current SARA law, individuals convicted of certain sex-related offenses who are on parole or post-release supervision and who either have been adjudicated Level 3 registrants or whose victim was under the age of 18 when the crime was committed are barred from "knowingly entering" within 1000 feet of the property line of any school or other facility used by persons under 18 years old. Exec. Law § 259-c(14).

[2] Criminal Courts Committee, *et al.*, *The Impact and Legality of Sex Offender Residency Restrictions Created by New York's Sexual Assault Reform Act* (Oct. 25, 2016), *available at* http://s3.amazonaws.com/documents.nycbar.org/files/20073107-SARAResidencyRestrictions_CrimCourt.CrimLaw.CJO.Corrections_Report_FINAL_10.24.16.pdf.

restrictions now would exacerbate the situation for no apparent gain in public safety, and at a high cost to the state.

The situation is dire at present. People entitled to release from prison are now being incarcerated for months and even years past their scheduled release dates for lack of access to SARA-compliant housing, at extraordinary personal cost to them and huge financial cost to the state.[3] The Vera Institute of Justice calculated that, in 2015, it cost New York an average of $69,355 per year (or $190 per day) to house a person in state prison.[4] People who do manage to be released are frequently unable to return to their family homes because of SARA restrictions and are instead directed to the shelter system. But not just any shelter will do: in 2014, the New York State Department of Corrections and Community Supervision ("DOCCS") "stopped sending offenders [subject to SARA restrictions] to shelters within 1,000 feet of school grounds because of political pressure."[5] This rendered most New York City shelters, including the Bellevue Men's Shelter, off limits and exponentially compounded the present housing crisis. This untenable situation is the subject of pending litigation.[6]

PROPOSED LEGISLATION

Should this provision pass, the housing search - particularly for Level 3 registrants returning home to New York City - would be nearly impossible. Given New York City's density, the existing prohibition on entering within 1,000 feet of any school already severely burdens people's ability to find housing, to travel, and to access social services.[7] The law thus implicates core constitutional rights,[8] a problem that would be compounded in two important ways should the additional proposed restrictions be enacted. First, people convicted of certain sex-related offenses who are currently on parole or post-release supervision would also be barred from "knowingly entering" within 1000 feet of a pre-kindergarten program or daycare center, which

[3] *See* Corinne Ramey, *Sex Offenders Sue City, State*, Wall Street Journal, June 22, 2016, *available at* http://www.wsj.com/articles/sex-offenders-sue-city-state-1466643719.

[4] Vera Institute of Justice, *The Price of Prisons*, https://www.vera.org/publications/price-of-prisons-what-incarceration-costs-taxpayers

[5] *Id.*

[6] *See Gonzalez v. Annucci*, 149 A.D.3d 256 (3d Dep't) (holding that the Department of Corrections and Community Supervision had not satisfied its duty to provide substantial assistance in locating housing to indigent registrant who was held past his release date due to SARA restrictions), *leave to appeal granted*, 29 N.Y.3d 912 (2017); *Alcantara v. Annucci*, 55 Misc. 3d 1216(A) (Sup. Ct., Albany Cnty 2017) (allowing to proceed claim that individuals convicted of sex offenses were held past their release dates under the pretense that they were being housed in a "residential treatment facility" that was, in practice, just a prison).

[7] *See Williams v. Dep't of Corr. & Cmty. Supervision*, 136 A.D.3d 147, 150 n.2 (1st Dep't 2016) ("most of Manhattan" is within 1,000 feet of a school), *appeal dismissed as moot*, 29 N.Y.3d 990 (2017); *Devine v. Annucci*, 45 Misc.3d 1001, 1006 (Sup. Ct., Kings Cnty 2014) ("large swaths of New York City," including a "very substantial portion of Brooklyn," is within 1,000 feet of a school); *People v. McFarland*, 35 Misc.3d 1243(A) (Sup. Ct., N.Y. Cnty 2012), rev'd on other grounds, 120 A.D.3d 1121 (1st Dep't 2014) (chance of finding an apartment in New York City not within 1,000 of a school "probably non-existent").

[8] *See, e.g., In re Taylor*, 343 P.3d 867 (Cal. 2015) (mandatory residency restriction for sex offenders on parole violated substantive due process rights to travel and freely associate, since the restriction bore no rational relationship to any valid state interest).

means additional areas of the city would be off limits to them. Second, and perhaps more troubling, people adjudicated as Level 2 or 3 registrants–even those not subject to parole or post-release supervision–would be categorically barred from living in family shelters. Since family shelters are, by definition, reserved for families, the practical effect of this proposal would be to separate parents from their children, further exacerbating family instability. Trying to squeeze people on the registry into fewer shelters and fewer neighborhoods statewide would also tighten the bottleneck for people who have served their prison sentences and await release to compliant housing, thereby increasing costs to the state.

What is more, all this disruption and harm, that which exists now and that which would be created by the proposed legislation, is unjustified by any studies showing that residency restrictions improve public safety. If anything, studies demonstrate that the opposite is true. Research has shown that most sex-related crimes against minors are committed not by strangers, but by a family member or someone known to the victim.[9] And because people who commit crimes against family members or known victims rarely "cross over" and commit crimes against strangers, the additional movement restrictions this bill proposes would do little to prevent re-offense.[10] Even among people who seek out stranger victims, studies fail to reveal any correlation between movement restrictions such as those in the proposed bill and reduced recidivism. A study examining the offense patterns of 224 people convicted of sex-related offenses who were released from incarceration in Michigan and Missouri between 1990 and 2005 showed that restrictions akin to those in the current SARA law - which would be tightened even further under the proposed legislation - would not have prevented any new offenses.[11] In fact, one of the study's policy recommendations was that stable housing services should be the central focus of reentry planning, particularly for people convicted of sex-related offenses. By contrast, the proposed amendments would make stable housing all but impossible.

CONCLUSION

In sum, legislation that seeks chimerical public safety gains while imposing terrible hardship upon people leaving prison and their families and burdening the public fisc should not be advanced. The Committee strongly opposes the proposed legislation.

Corrections and Community Reentry Committee
Alex Lesman, Chair

March 2018

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[9] *See* U.S. Dep't of Justice Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident and Offender* (2000), https://www.bjs.gov/content/pub/pdf/saycrle.pdf (last visited Mar. 2, 2018).

[10] *See* Eric Beauregard *et al.*, *Decision Making in the Crime Commission Process: Comparing Rapists, Child Molesters, and Victim-Crossover Sex Offenders*, 39 CRIMINAL JUSTICE & BEHAVIOR 1275-95 (2012); Philip Firestone *et al.*, *A Comparison of Incest Offenders Based on Victim Age*, 33 J. AMERICAN ACADEMY OF PSYCHIATRY & LAW 223-32 (2005).

[11] *See* Beth M. Huebner, *et al.*, *An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri* (July 2013), https://www.ncjrs.gov/pdffiles1/nij/grants/242952.pdf (last visited Mar. 2, 2018).