Court of Appeals

State of New York

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

- against -

MATTHEW CORR,
Defendant-Appellant.

APL-2023-00003

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,

- against -

BRYAN MCDONALD,
Defendant-Appellant.

APL-2023-00004

Brief of *Amicus Curiae*
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in Support of Defendant-Appellants

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Pursuant to 22 N.Y.C.R.R. Part 500.1(f), the New York City Bar Association (the "City Bar") discloses that it is a New York not-for-profit organization with no shareholders or parent or subsidiary corporations. Its mission is to promote reform of the law and uphold the rule of law and access to justice in support of a fair society and the public interest.

The City Bar has three non-profit affiliates, the City Bar Fund, the City Bar Justice Center, and the Cyrus R. Vance Center for International Justice, through which it provides pro bono legal services in New York City and supports the creation and expansion of pro bono and access to justice in other countries.

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STATEMENT OF INTEREST

Founded in 1870, the New York City Bar Association (the "City Bar") is one of the oldest bar associations in the United States. With approximately 23,000 members and 150 standing and special committees, the City Bar seeks to promote reform in the law and to improve the administration of justice at the state and local levels by commenting on proposed legislation, publishing reports on legal issues, and participating as *amicus curiae* in litigation that has the potential to impact the practice of law. In these ways, the City Bar serves as a voice for the legal profession in promoting the equitable, efficient administration of justice in New York.

To achieve its mission, the City Bar engages in social issues via policy initiatives, involvement in access-to-justice initiatives, and pro bono representation in many areas, including immigration, homelessness, and criminal justice. Multiple City Bar committees and task forces composed of experienced practitioners study and advocate for criminal justice reform.

The City Bar's Sex Offense Working Group is comprised of City Bar attorneys, as well as mental health practitioners specializing in the treatment of people accused or convicted of sexual offenses. It studies the effects of the legal regimes regulating individuals convicted of sex-related offenses and recommends policy and programmatic changes. The Corrections and Community Reentry Committee addresses a wide range of criminal justice and reentry issues including

conditions affecting people in jails, prisons, and other detention facilities, as well as people under supervision on probation and parole. Members of both groups, as well as the City Bar more generally, have an interest in ensuring that New York's Sex Offender Registration regime is implemented in as fair and just a manner as possible. As they regularly interact with and serve the population impacted by the lower courts' decisions in these matters, they appreciate and understand the consequences of continued registration as a "sex offender" beyond the legislatively prescribed 20-year term mandated by the statute. Accordingly, on behalf of the City Bar, the Sex Offense Working Group and Corrections and Community Reentry Committee respectfully submit this brief as *amicus curiae* in support of the Appellants.

No party contributed content to this brief. No party or party's counsel, or other person or entity other than movant and movant's counsel, contributed money to fund the preparation or submission of the brief.

PRELIMINARY STATEMENT

The People of the State of New York seek to extend by several years the time low risk registrants are subject to the New York Sex Offender Registration Act ("SORA") on the sole basis that time spent on the sex offender registries of other states should not count toward SORA's 20-year registration requirement. The New York City Bar Association, a voluntary membership organization of approximately 23,000 lawyers, including both prosecutors and criminal defense lawyers, believes

that as a matter of sound public policy, the Appellants should be credited with the time they spent on the out-of-state registries, and their time on New York's registry should not be extended, because, as set forth below: (1) the prosecution's interpretation of the law irrationally and unfairly subjects people who have moved to New York after time on another registry to the burden of additional years of registration, in contravention of the 20-year period prescribed by the legislature; (2) empirical evidence shows that registration and notification laws, such as SORA, do not protect the public from re-offense by the people listed on them; and (3) registration and notification laws are destabilizing to listed people, hindering their rehabilitation and thereby undermining public safety.

ARGUMENT

I. BACKGROUND AND HISTORY OF NEW YORK'S SEX OFFENDER REGISTRATION ACT (SORA)

As part of the Violent Crime Control and Law Enforcement Act of 1994, Congress passed the "Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act," directing every state to create a registry of people convicted of a sex crime or kidnapping against a minor, or of a sexually violent crime.[1] The act required the states to establish these registries by the end of

[1] Pub. L. No. 103-322, Title XVII, Subtitle A, § 170101, 108 Stat. 1803 (1994), *repealed and replaced by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587.

1997 or risk losing 10 percent of their federal criminal justice funding.[2] Law enforcement agencies were permitted to release information from these registries "to protect the public concerning a specific person," but the act did not require public access.[3]

Later in 1994, New Jersey enacted the original "Megan's Law," which required that information about people on the sex offense registry be disseminated to the surrounding community.[4] In 1996, President Clinton signed the federal version of Megan's Law, requiring the release of information from state registries, as an amendment to the Jacob Wetterling Act.[5]

New York's version of Megan's Law, the Sex Offender Registration Act ("SORA"), was passed on July 25, 1995, and became effective on January 21, 1996.[6] SORA requires every person convicted of a sex offense to register and provide personal information to the state Division of Criminal Justice Services ("DCJS").[7] This information includes the individual's name, address of residence, phone

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[2] *Id.*
[3] *Id.*
[4] Codified at N.J.S.A. 2C:7-1 *et seq.*
[5] Pub. L. No. 104-145, 110 Stat. 1345 (1996), *repealed and replaced by* Adam Walsh Child Protection and Safety Act of 2006, Pub. L. No. 109-248, 120 Stat. 587. Since the mid-1990s, the term "Megan's Law" has been used generically to refer to laws requiring people with sex offense convictions to register with the authorities and requiring government authorities to make information about them publicly available.
[6] 1995 Sess. Law News of N.Y. Ch. 192 (S. 11–B) (McKinney's), codified as Correction Law art 6-C.
[7] Correction Law § 168-f.

number, name and address of employer, automobile information including license plate number and driver's license number, internet information including service providers, identifiers and e-mail addresses, and higher education information including whether they are attending, employed or enrolled in school.[8] Failure to provide this information or keep it updated subjects the person to prosecution for a class E felony.[9]

SORA also provides for public disclosure and notification of who is on the registry by way of a state government website identifying those adjudicated Level 3 (high risk of re-offense) and Level 2 (moderate risk of re-offense).[10] People adjudicated Level 1 (low risk of re-offense) do not appear on the website, but callers to a toll-free number can find out whether a person is registered as a sex offender, even if they are at SORA Level 1, such as the Appellants.[11]

In 1995, when the New York Legislature passed SORA, it determined that the duration of registration would be 10 years if the person was determined to be at Level 1, meaning at low risk of re-offense.[12] In 2006, just as the first group of Level 1 registrants was poised to have their registration requirement end, and apparently

[8] *Id.*
[9] Correction Law § 168-t.
[10] Correction Law §§ 168-l(6)(b),(c); 168-q(1).
[11] Correction Law §§ 168-b(5); 168-p.
[12] 1995 Sess. Law News of N.Y. Ch. 192, § 168-h.

without the benefit of any empirical evidence or research, the Legislature amended SORA to extend the duration of registration for low-risk people to 20 years.[13]

The Appellate Division now has effectively extended the legislatively mandated 20-year period of registration even further by refusing to credit time the Appellants spent on the registries of other states. This irrational and unfair result follows from the Appellate Division's interpretation of the phrase "date of initial registration" in Correction Law § 168-h to mean *date of initial registration in New York.*[14] In evaluating whether the statutory interpretation that prevailed below is reasonable and comports with sound public policy, it is appropriate to consider the expressed purpose of SORA and whether extended registration would serve it.[15]

[13] 2006 Sess. Law News of N.Y. Ch. 1 (S. 6409, A. 9472), §§ 3, 5 (McKinney's).
[14] *People v. Corr*, 208 A.D.3d 136 (2d Dep't 2022); *People v. McDonald*, 207 A.D.3d 669 (2d Dep't 2022).
[15] *See Albany L. Sch. v. New York State Off. of Mental Retardation & Developmental Disabilities*, 19 N.Y.3d 106 (2012) (In case requiring statutory interpretation, court "should inquire into the spirit and purpose of the legislation, which requires examination of the statutory context of the provision as well as its legislative history.") (cleaned up).

II. THE INTERPRETATION OF CORRECTION LAW § 168-h THAT PREVAILED IN THE COURTS BELOW IRRATIONALLY AND UNFAIRLY SUBJECTS PEOPLE WHO HAVE MOVED TO NEW YORK AFTER TIME ON ANOTHER REGISTRY TO THE BURDEN OF ADDITIONAL YEARS OF REGISTRATION, IN CONTRAVENTION OF THE 20-YEAR PERIOD PRESCRIBED BY THE LEGISLATURE.

As the court below reiterated, SORA was intended to serve a "remedial" purpose—preventing future crime.[16] The registry was created in order "to protect the public," *People v. Mingo,* 12 N.Y.3d 563, 574 (2009), from people convicted of sex offenses who posed a "danger of recidivism."[17] Contrary to the intermediate appellate court's conclusion, however, mandating that those who relocate from another jurisdiction, and are found to pose the lowest risk, register for more than the statutorily required 20 years, does nothing to reduce or prevent future sexual harm. Instead, it leads to irrational and unfair results.

Any remedial purpose achieved by a registry is accomplished whether a person spends 20 years, already an exceptionally long time, on New York's registry, another state's registry, or a combination of the two. As discussed in greater depth under Point A, *infra*, it is the passage of 20 years without sexual re-offense that matters, not the particular registry on which the person appears. Despite this empirically proven reality, the interpretation of Correction Law § 168-h that

[16] *Corr*, 208 A.D.3d at 140.
[17] 1995 Sess. Law News of N.Y. Ch. 192, § 1.

prevailed below endorses an illogical notion that time on a registry without re-offense in a state other than New York is meaningless.

Moreover, as explained, *infra*, in Point B, given the devastating impact registration has on a person's ability to live a stable and productive life, extending the term of registration beyond the statutorily mandated 20 years for those found to pose the lowest risk, merely based on their initial state of residence, is manifestly unfair. Simply because their offense occurred in another state—not because their offense was more serious, or because they pose a greater risk—they are burdened with additional years of registration. When a statutory interpretation fails to accomplish the Legislature's stated goals, has a disproportionate impact on those subject to it, and is counterproductive in sustaining public safety, it should be rejected by this Court as inconsistent with the Legislature's intent and sound public policy.

A. EMPIRICAL EVIDENCE SINCE SORA'S ENACTMENT SHOWS THAT REGISTRATION AND NOTIFICATION LAWS, SUCH AS SORA, DO NOT PROTECT THE PUBLIC FROM RE-OFFENSE BY THE PEOPLE LISTED ON THEM.

There is no practical reason, and it would serve no identified purpose of SORA, to require that a person who has been adjudicated a Level 1, low risk, registrant register in New York for an additional 20 years, no matter how many years they had been on another state's registry. This is particularly true because the

notion that registration and notification laws such as SORA protect the public is based on faulty information and more than one false premise. Chief among them is the misconception that the re-offense rate among sex offenders is "frightening and high"—a claim made prominent by Supreme Court Justice Anthony Kennedy that regrettably took on a life of its own.

Considerable research over the past 25 years has proven registration and notification laws to be ineffective in reducing recidivism or increasing public safety. This research strongly suggests that, on the contrary, registration and notification laws are harmful, counterproductive, and undermine public safety. Extending the duration of New York's SORA registration by denying the Appellants credit for time registered in other states would compound the harm.

i. Closer Examination of Earlier Citations Used to Justify Registration Schemes Reveals the Mythic Nature of "High" Sexual Recidivism Rates.

In passing registration and notification laws, legislators have frequently cited the purportedly high rates of recidivism among people who have sexually offended. In considering challenges to these laws, judges have done the same. Over 20 years ago, this misinformation received a boost from the opinion of Supreme Court Justice Anthony Kennedy in *McKune v. Lile,* 536 U.S. 24, 33-34 (2002), where the issue was whether the adverse consequences a Kansas prisoner faced for refusing to make admissions required by a sexual abuse treatment program were so severe as to violate

his right against compelled self-incrimination. Ruling against the prisoner, and specifically in support of his finding that state prison officials had a vital interest in rehabilitating people convicted of sex offenses, Justice Kennedy referred to "a frightening and high" risk of recidivism by *untreated* sex offenders that was "as high as 80%." *McKune v. Lile,* 536 U.S. at 33-34. A year later, in *Smith v. Doe,* 538 U.S. 84 (2003), Justice Kennedy, writing for the majority, upheld the application of Alaska's registry requirement to those convicted before it was established. He reasoned that it did not violate the Ex Post Facto Clause because it was not punishment, but merely a civil measure reasonably designed to protect public safety. *Id*. at 96. In support of the law's reasonableness, he asserted (leaving out the modifier "untreated") that the risk of recidivism by "sex offenders" is "frightening and high," citing to his own opinion in *McKune. Id.* at 103.

We now know that Justice Kennedy's assertion of a "frightening and high" recidivism risk was based on faulty information. Nevertheless, the phrase has been influential: it has appeared in more than 160 lower court opinions and has helped justify laws that effectively banish people on registries from many aspects of everyday life.[18]

[18] A Lexis search of legal materials found the phrase in 160 judicial opinions.

In 2015, the phrase and the recidivism rate referenced by Justice Kennedy were debunked by scholars Ira Ellman and Tara Ellman.[19] Through their research, the Ellmans traced the cited 80% recidivism rate to a single citation given in *McKune* to a 1988 publication of the U.S. Department of Justice, National Institute of Corrections, entitled "A Practitioner's Guide to Treating the Incarcerated Male Sex Offender." The Ellmans surmise that Justice Kennedy likely found this source in the amicus brief supporting Kansas filed by the Solicitor General, as that brief cites it for the claim that "sex offenders" have such an astonishingly high recidivism rate.[20] The Practitioner's Guide itself provides but one source for the claim, an article published in 1986 in Psychology Today*,* a mass-market magazine aimed at a lay audience.[21]

The 1986 Psychology Today article was written by Robert Freeman-Longo, a counselor who ran a treatment program at an Oregon prison, and R. Wall, a therapist who worked with him. In the article the authors state: "Most untreated sex offenders released from prison go on to commit more offenses—indeed, as many as 80% do."[22] The article gave no supporting references, offered no backup data, and mentioned

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[19] Ira Ellman & Tara Ellman, *"Frightening and High": The Supreme Court's Crucial Mistake About Sex Crime Statistics,* 30 Const. Comment. 495 (2015).
[20] *Id.* at 498.
[21] Robert E. Freeman-Longo & R. Wall, *Changing a Lifetime of Sexual Crime,* Psychology Today at 58 (March 1986).
[22] *Id.* at 64.

no scientific control groups. Freeman-Longo has since repudiated his estimate, acknowledging that it did not accurately reflect recent research and should not be used as a basis for public policy.[23]

Adam Liptak, writing for the New York Times, summed up the situation: "The basis for much of American jurisprudence and legislation about sex offenders was rooted in an offhand and unsupported statement in a mass-market magazine, not a peer-reviewed journal."[24]

Despite these correctives, the misconception persists among policymakers and the general public that the risk of sexual recidivism is high and endures for decades, if not for a lifetime. But it is not just that the original premise was based on insufficiently vetted information. Rather, the original premise has been proven wrong by intervening research.

In the 37 years since the Psychology Today article was published, there have been numerous evidence-based, scientific studies on the question of the recidivism rate of people who commit sex offenses. As research has accumulated, the empirical findings paint a striking picture: The recidivism risk of people with sex offense convictions is actually quite low. Such people have some of the lowest rates of same-

[23] Freeman-Longo repudiated the article's estimate in an interview with Joshua Vaughn for the Carlisle, Pennsylvania Sentinel published March 25, 2016. See Joshua Vaughn, *Closer Look: Finding Statistics to Fit a Narrative*, The Sentinel, March 25, 2016.
[24] Adam Liptak, *Did the Supreme Court Base a Ruling on a Myth?,* N.Y. Times, March 6, 2017.

crime recidivism of any category of offender, and they are even less likely to commit another offense the longer they remain offense-free in the community. At some point, if they remain sex offense-free, people who have been convicted of a sex offense in the past are no more likely to commit another sex offense than anyone else in the general population.[25] [26] [27]

Interestingly, and particularly relevant given the timelines in New York's registration scheme, Canadian scholar R. Karl Hanson and his colleagues have found through their research that the risk for new sex offenses is, for practical purposes, extinguished when people successfully remain sex offense-free for 20 years in the community. The lower a person's risk level, the shorter the time to this desistance threshold. For example, people in the lowest risk category were already past the desistance threshold at the time of their release from prison, while people in the average risk category crossed the desistance threshold after 8-to-13 years sex offense-free in the community. People in the high risk category crossed the desistance threshold in years 16 to 20.[28] Yet the interpretation of SORA that

[25] R. Karl Hanson, Andrew J.R. Harris, Leslie Helmus & David Thornton, *High-Risk Sex Offenders May Not Be High Risk Forever,* 29 Journal of Interpersonal Violence 2792 (2014).
[26] R. Karl Hanson, Andrew J.R. Harris, Elizabeth Letourneau, L. Maike Helmus, & David Thornton, *Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender,* 24 Psychol., Pub. Pol'y, and L. 48 (2017).
[27] R. Karl Hanson, *Long-Term Recidivism Studies Show That Desistance Is the Norm,* 45 Crim. Just. and Behavior 1340 at 1342 (2018).
[28] *Id.* at 1342-43.

prevailed below would require people at the lowest risk level to continue to register well beyond those meaningful milestones. Again, this burden would not be based on any finding that they pose anything more than a low risk, but simply because they lived, and registered, for some length of time in another jurisdiction.

Not only is the sex offense recidivism rate objectively low,[29] but the overall recidivism rate of people with sex offense convictions is low when compared to recidivism rates of other categories of offenders—the second lowest, in fact—according to a report released by the Bureau of Justice Statistics ("BJS") in 2019.[30] The BJS study found that in the nine years following release for 67,966 prisoners from 30 states, the recidivism rate for people convicted of a sex offense was lower than for people in any other offender category except for those convicted of homicide.[31] No other category of offender is subjected to a registration scheme like SORA, however, let alone registration for years beyond the point at which their recidivism rate is shown to be nearly nonexistent.

Looking at similar-offense recidivism, the study found that only 7.7% of people convicted of a sex offense and released in 2005 were subsequently arrested

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[29] Charles Patrick Ewing, *Justice Perverted: Sex Offense Law, Psychology, and Public Policy* at xvii (2011).
[30] Mariel Alper & Matthew Durose, *Recidivism of Sex Offenders Released from State Prison: A 9-Year Follow-Up (2005-14),* Special Report NCJ 251773, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics at 4 (2019).
[31] *Id.*

for a sex offense during the nine-year follow-up period. By comparison, the study found that the similar-offense recidivism rate for people convicted of property offenses was 63.5%, for drug offenses it was 60.4%, and for public order offenses it was 70.1%.[32]

A similar BJS study was released in 2003.[33] That study involved a three-year follow-up of 9,691 people convicted of sex offenses who were released from state prisons in 15 states in 1994. It found that people with sex offense convictions had a 25 percent lower overall re-arrest rate than people with non-sex offense convictions.[34] Looking at similar-offense data, the study found that 5.3% of the people who had been convicted of a sex offense were rearrested for another sex offense within three years.[35] This was consistent with BJS findings from the previous year, when researchers broke down the recidivism rate by crime type and found that the crime-of-conviction category with the lowest re-arrest rate was homicide, and the next lowest was sex offenses.[36]

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[32] *Id.* at 4-5.
[33] Patrick A. Langan, Erica L. Schmitt & Matthew R Durose, *Recidivism of Sex Offenders Released from Prison in 1994,* NCJ 198281, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2003).
[34] *Id*. at 2.
[35] *Id.* at 24.
[36] Patrick A. Langan & David J. Levin, *Recidivism of Prisoners Released in 1994,* Special Report NCJ 193427, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics at 1, 8 (2002).

ii. Empirical Research Confirms the Ineffectiveness of Registration and Notification Laws.

When considering whether to adopt an interpretation of the law that would substantially increase the amount of time a person must be subject to New York's registry, an important point to consider is whether its onerous obligations achieve its intended goal. Extensive research in New York and elsewhere shows that registration and notification laws *do not* deliver the public safety effect that is purported to justify them. The weight of the available evidence indicates that registries have no statistically significant effect on offending by people with sex offense convictions.[37] It would therefore be illogical to conclude, as the courts did below, that extending a person's time on the registry beyond what was contemplated by the Legislature serves a remedial purpose.

The most comprehensive study on the effectiveness of laws like SORA is a recently published meta-analysis that covered 18 research studies, reflecting 25 years of evaluation, data, and 474,640 formerly incarcerated people.[38] As authors Kristen M. Zgoba and Meghan M. Mitchell explain, the random-effects meta-

[37] Ewing, *supra*, at 115.
[38] Kristen M. Zgoba & Meghan M. Mitchell, *The Effectiveness of Sex Offender Registration and Notification: A Meta-Analysis of 25 Years of Findings,* 19 Journal of Experimental Criminology 71 (2023).

analysis model they employed demonstrated that registration and notification laws have no effect on recidivism.[39]

Several other studies have analyzed the effectiveness of such laws, using data and research developed in the 20 years following the enactment of the federal Megan's Law in 1996. In one such study, published in 2018, Corey Call systematically reviewed 20 years of research on Megan's Law to address how successful it had been in reducing sexual victimization.[40] Call's analysis of 22 peer reviewed articles revealed that over the course of two decades there had been a distinct lack of evidence showing that the registration and notification regime had been effective in reducing sex offending.[41] Call identified 10 studies that focused on the effect of Megan's Law on recidivism. Nine of the 10 studies concluded that Megan's Law had not led to a statistically significant decrease in sexual recidivism.[42] Even more striking, Call identified several scholars who suggested that the collateral consequences associated with registration and notification laws may actually increase the rate of recidivism.[43]

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[39] *Id.* at 71.
[40] Corey Call, *Megan's Law 20 Years Later: A Systematic Review of the Literature on the Effectiveness of Sex Offender Registration and Notification,* 5 Journal of Behavioral and Social Sciences 205 (2018).
[41] *Id.* at 214.
[42] *Id.* at 210.
[43] *Id.* at 213.

Five years before the publication of her 25-year meta-analysis, Zgoba and two of her colleagues conducted a study of the sexual and general recidivism rates of 547 people convicted of sex offenses and released from prison before and after the enactment of the original Megan's Law in New Jersey. Participants in the study were followed for an average of 15 years after release. No differences in recidivism rates were noted between the two cohorts.[44]

A 2008 study by a team of researchers at the University of Albany School of Criminal Justice is also important to note because it specifically focused on New York's SORA.[45] Using data provided by DCJS, these scholars examined the impact of SORA on public safety.[46] The primary research question was: Are there differences in sexual offense arrest rates before and after the enactment of SORA?[47] The authors concluded that the enactment of SORA had no significant impact on rates of total sexual offending, rape, or child molestation, neither in the aggregate nor in the sub-groups of those with and without prior sex offense convictions.[48] The results of this study are consistent with prior and subsequent research and cast doubt

[44] Kristen M. Zgoba, Wesley G. Jennings, and Laua M. Salerno, *Megan's Law 20 Years Later: An Empirical Analysis and Policy Review,* 45 Crim. Just. and Behavior 1028 at 1041 (2018).
[45] 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 Psychol., Pub. Pol'y, and L. 284 (2008).
[46] *Id.* at 284.
[47] *Id.* at 287.
[48] *Id.* at 297.

on the effectiveness of registration and notification to reduce rates of sexual offending.[49]

The University of Albany researchers pointed out that SORA was based on two commonly held misconceptions regarding sex offenses and the people who commit them.[50] One was the false belief that most, if not all, people who commit sex offenses will re-offend.[51] This study, along with other research, found relatively low recidivism rates for people who had a prior conviction for a sex offense. Significantly, it is people without prior sex offense convictions who commit the vast majority of sex offenses. As the study shows, 96% of the people arrested for sex offenses had no prior sexual offense conviction and thus would not have been on the registry at the time of the offense.[52]

Second, registration and notification laws are based on the false assumption that strangers commit most sexual offenses.[53] In fact, research unequivocally finds that the vast majority of sex offenses are committed by family members, intimates, or acquaintances at home or in the home of a friend, neighbor, or relative.[54] Thus, the Albany researchers concluded more than a decade ago that it was becoming

[49] *Id.*
[50] *Id*.
[51] *Id.*
[52] *Id*.
[53] *Id*.
[54] *Id.* at 298.

increasingly clear from the growing body of research that registries and community notification laws are not an effective strategy to reduce sex offenses.[55]

In the face of this avalanche of research calling into question the effectiveness of registries and public notification laws, it would be irrational to require not just registration and public disclosure, but more than 20 years of it for those found to pose the lowest risk, simply because their early years of registration were in another jurisdiction. Not only would that not accomplish SORA's remedial purpose, but it would achieve *no* remedial purpose.

B. REGISTRATION AND NOTIFICATION LAWS ARE DESTABILIZING TO LISTED PEOPLE, HINDERING THEIR REHABILITATION AND THEREBY UNDERMINING PUBLIC SAFETY.

As discussed above, extensive research has demonstrated that registration and notification laws have not achieved their purposes of reducing recidivism and increasing public safety. Disturbingly, professionals who study sexual offending almost uniformly agree that such laws are more likely counterproductive and harmful to public safety, because they hinder the rehabilitation and reintegration into society of people who commit sex offenses.[56] Extending those harms for those who pose the lowest risk for no reason other than their initial location of registration would be unsound public policy.

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[55] *Id.* at 299.
[56] *See, e.g.*, Ewing, *supra*, at 115; Call, *supra*, at 213.

There are many indisputably harmful collateral consequences of New York's SORA registration and notification scheme, including social ostracism and disgrace, humiliation, hopelessness, victimization by vigilantes, and the loss of pro-social relationships, employment, housing, and educational opportunities.[57] The pressure, anxiety, and hopelessness caused by these collateral consequences have the counterproductive effect of increasing the likelihood of sexual recidivism.[58] This increased likelihood of recidivism caused by the collateral consequences of registration and notification was recognized by Call in his systematic review of Megan's Law research.[59] Similarly, Zgoba and Mitchell recognized that maintaining low-risk people on public registries for prolonged periods may lead to housing and employment instability, thereby increasing rather than decreasing the risk of reoffending.[60]

It is well established that stable housing, employment, and pro-social relationships are fundamental building blocks of successful rehabilitation and desistance from crime after an offense.[61] But SORA's collateral consequences have

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[57] The collateral consequences of being on the registry are identified in various resources and cases, including the website of the New York State Unified Court System (https://www.nycourts.gov/courthelp/criminal/sexoffenderconsequences.shtml), *People v. Diaz,* 150 A.D.3d 60, 66 (1st Dep't 2017), and *Doe v. Pataki*, 120 F.3d 1263, 1279 (2d Cir. 1997).
[58] Ewing, *supra*, at 115.
[59] Call, *supra*, at 213.
[60] Zgoba and Mitchell, *supra*, at 91.
[61] *See, e.g.,* Special Committee on Collateral Consequences of Criminal Proceedings, New York State Bar Association, *Re-Entry and Reintegration: The Road to Public Safety* at 445 (2006) ("[C]ollateral consequences hinder successful reintegration by restricting access to the essential

the counterproductive effect of diminishing the likelihood of successful reintegration into communities.[62] Because they face barriers to successful reintegration, people subject to SORA are at a higher risk of re-offending than they would be if they were supported in their efforts to find stable housing and employment and form pro-social relationships.[63] While the rates of sexual re-offending and overall re-offending are low for people with sex offense convictions, these rates could be even lower with evidence-based policies in place. As a child safety advocate at the Jacob Wetterling Foundation put it, "When a sex offender succeeds in living in the community, we are all safer."[64]

Public safety is SORA's stated purpose, and that purpose is best served by interpreting and applying Correction Law § 168-h such that it reduces the risk of future sexual harm. Mandating that those found to pose the lowest risk continue to

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features of a law-abiding and dignified life—family, shelter, work, civic participation and financial stability."); Joan Petersilia, *When Prisoners Come Home: Parole and Prisoner Reentry* at 112, 123 (2003) ("Research has empirically established a positive link between job stability and reduced criminal offending.") ("Housing and homelessness certainly affect recidivism, but analysts say there are broader implications, and parolees' homelessness influences overall crime rates in the community."); Brookings-AEI Working Group on Criminal Justice Reform, *A Better Path Forward for Criminal Justice* at 51 (2021) ("Researchers and policymakers need to work together to create environments that give people the space to exercise agency and actively explore opportunities that express different pro-social identities.").

[62] Human Rights Watch, *No Easy Answers: Sex Offender Laws in the US* at 9 (2007); Brookings-AEI Working Group on Criminal Justice Reform, *supra*, at 52 ("Policies that continue to center a criminal act years after that act was committed directly contradict everything we know about desistance.").

[63] Sandler, *et al., supra,* at 299.

[64] Human Rights Watch, *supra*, at 10.

bear the heavy burden of annual registration and public disclosure of their sex offense beyond the 20 years the Legislature specified would serve no rational purpose. Worse, extending this burden would compound the destabilizing effect SORA has on registrants, which increases their risk of re-offense. That would not serve the cause of public safety.

CONCLUSION

Because extending the legislatively prescribed time on New York's registry for the Appellants and other such low-risk people who move to New York from other states would be irrational and unfair, fail to reduce recidivism, tend to undermine public safety, and harm people who are required to register, the decisions of the Appellate Division in these cases should be reversed.

Respectfully submitted,

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RULE 500.13 CERTIFICATION

Pursuant to Rule 500.13 of the Rules of Practice of the Court of Appeals of the State of New York, I hereby certify that the foregoing proposed *amicus* brief was prepared on a computer using Microsoft Word.

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