

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN DOES #1-5 and MARY DOE,

File No. 2:12-cv-11194

Plaintiffs,

v.

Hon. Robert H. Cleland

RICHARD SNYDER, Governor of the
State of Michigan, and COL. KRISTE
ETUE, Director of the Michigan State
Police, in their official capacities,

Mag. Judge David R. Grand

Defendants.

***AMICI CURIAE* BRIEF OF
THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS,
MICHIGAN COUNCIL ON CRIME AND DELINQUENCY,
PROFESSIONAL ADVISORY BOARD TO THE COALITION FOR A
USEFUL REGISTRY,
AND
CENTER FOR ASSESSMENT, INC.**

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STATEMENT OF IDENTITY & INTERESTS OF THE AMICI CURIAE

The **Association for the Treatment of Sexual Abusers** (ATSA) is an international, interdisciplinary non-profit organization for the advancement of professional guidelines and practices in the field of sex offender treatment, research, management and policy. ATSA is dedicated to preventing sexual abuse through effective treatment and management of individuals who sexually abuse or are at risk to abuse. Through research, professional education, and shared learning, ATSA promotes evidence-based policies and practices that protect the public from sexual violence. ATSA's members include many of the world's foremost researchers in the study of sexual violence as well as professionals who conduct evaluations and provide treatment services to sexual abusers and survivors of sexual abuse. Given its unique scientific expertise and mission, ATSA has a significant interest in the proper resolution of this case, as well as an important perspective for the court's evaluation of public safety policies.

The **Michigan Council on Crime and Delinquency** (MCCD) is a non-profit organization whose mission is to improve the effectiveness of policies and systems aimed at the prevention and reduction of crime and delinquency. Since our establishment in 1956, we have been a trailblazer in addressing the underlying causes of crime and advocating for the use of evidence-informed approaches within Michigan's juvenile and criminal justice systems. Through efforts in data-

driven research, community organizing, training, and technical assistance, MCCD strives to engage and prepare Michigan citizens and leaders to collaborate for safer, healthier communities. Additionally, we work to implement and evaluate model programs and strategies that will protect the public. MCCD is committed to managing sex offenders in Michigan communities according to policies that reflect current, comprehensive research regarding effectiveness.

The **Professional Advisory Board to the Coalition for a Useful Registry (PAB)** is an organization that promotes public safety and constructive changes to sex offender laws in Michigan that reduce the over-inclusion of juvenile and low-risk offenders. PAB strives to make the Michigan Sex Offender Registry more meaningful and useful to everyone, while promoting the ability of low-risk offenders to achieve their potential as constructive members of society. PAB is a multidisciplinary group of professionals that includes prosecutors, defense attorneys, judges, probation officers, and professionals involved in treatment of victims and offenders. *See* Professional Advisory Board list (Exhibit 1). The Board also undertakes research and advocacy.

The **Center for Assessment** is a Michigan-based practice that conducts comprehensive diagnostic assessments and evaluations for victims of sex crimes, as well as for people who are accused or convicted of sexual based offenses. The Center conducts comprehensive risk assessments and psychological evaluations

that are used by the court for both sentencing and treatment recommendations. The Center is dedicated to conducting assessments that support survivors, create safe communities, and hold perpetrators accountable while allowing them to obtain quality treatment. Community safety can be better achieved when offenders are provided with evidence based treatment. The Center for Assessment offers extensive knowledge about factors associated with recidivism, victims' needs, empirically-derived methods for reliably identifying high risk offenders, and effective treatment and reentry strategies for offenders.

INTRODUCTION

Preventing sexual abuse and protecting the public from sex offending is a compelling state interest for Michigan and is also a core interest of each amici. In the hopes of promoting these goals, Michigan created extensive laws regulating people with sex offense convictions. These include multipart reporting requirements, an expanding public registry, and multiple limitations on employment, travel, housing, parenting, and Internet use. Some of these legal requirements can be vague and impossible to navigate, for both offenders and law enforcement. Additionally, restrictions are generally imposed in a broad-based manner without consideration for the notable differences in individual risk, motivations, and circumstances for varying types of sex offenders.

Research to date has revealed no evidence that broad-based restrictions for sex offenders achieve the state's public safety goal. Multiple studies have found that restrictions applied in a broad-based manner to all sex offender requirements, like those in Michigan, do not reduce offending and may actually increase recidivism, thereby undermining the public safety goals the laws seeks to advance. Vague and confusing laws also create difficulties with compliance and enforcement. The state additionally expends its limited time and resources to enforce the current broad-based restrictions and to maintain a growing, costly registry. These resources are subsequently unavailable for prevention efforts, victims' services, and from thoroughly monitoring offenders who are identified as posing the highest risk to communities.

Clear, narrowly tailored, empirically-based restrictions for sex offenders, rooted in the assessments of individual risk and circumstances, provide the greatest protection for the public. Michigan's current scheme does not adequately differentiate between offender groups or apply individualized restrictions based on an offender's identified risk factors. Sex offenders are a heterogeneous group who perpetrate sexually abusive behavior at differing frequency, for varying reasons, and present with different levels of risk for future sexually abusive behavior. Due to these differences, broad-based restrictions may reduce offending in some cases while increasing recidivism in others. Michigan's current scheme does not utilize

narrowly tailored restrictions that have been identified by research to promote public safety and offender-compliance.

ARGUMENT

I. Michigan's sex offender management scheme is based on misconceptions about sexual abuse and sexual offenders that are not supported by research.

Michigan has developed an extensive scheme of prohibitions, restrictions, and requirements for sex offenders aimed at increasing public safety. However, these laws are based on the assumption that sex offenders are a homogenous group who are all more or less the same and, therefore, can be regulated and managed identically. Current research indicates that individuals who sexually abuse are a heterogeneous group who cross all socioeconomic, educational, gender, and cultural lines. Karl Hanson & Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (2004). Research has also shown that sex offenders additionally present with different motivations for sexual offending, exhibit distinct criminogenic needs, and present with different levels of risk for reoffending. *Id.*

In order to protect the community, the treatment and management of sex offenders should apply individualized restrictions and provide more intensive services to those people at the highest risk of reoffending. J. Bonta & D.A. Andrews, Public Safety Canada, *Risk-Need-Responsivity model for offender*

assessment and rehabilitation (2007); Karl Hanson et al., *The principles of effective correctional treatment also apply to sexual offenders: A meta-analysis*, 36 *Criminal Justice and Behavior* 865-891 (2009). The offender's level of risk can be determined by an empirically validated risk assessment tool and an assessment of the offender's individualized risk factors and community re-entry needs to ensure basic lifestyle stability. *Id.* Conversely, overly broad application of strategies for all offenders creates significant difficulties for offenders to successfully re-integrate into the community in a manner which maximizes, rather than compromises, community safety. Joan Tabachnick & Alisa Klein, Association for Treatment of Sexual Abusers, *A Reasoned Approach: Reshaping SO Policy to Prevent Child Sexual Abuse* (2011). Therefore, it is imprudent to impose statutory burdens without individualized consideration, particularly since this may result in increased recidivism (see Section II herein).

High recidivism rates for sexual offenders are often cited in support of more stringent restrictions, despite consistent research indicating a low likelihood of re-offense. For example, the Department of Justice found that only 5.3% of sex offenders were rearrested for a new sex crime within three years of release from prison. Bureau of Justice Statistics, *Recidivism of Sex Offenders Released From Prison in 1994*, 24 (2003). As well, recent state-sponsored studies support this finding. For example, Connecticut found that sexual recidivism rates after five

years were 3.6% for rearrest and 2.7% for a new sex offense conviction – “much lower than what many in the public have been led to expect or believe. These low re-offense rates appear to contradict conventional wisdom that sex offenders have very high sexual re-offense rates.” State of Connecticut, Office of Policy and Management, *Recidivism among sex offenders in Connecticut* (2012). The Indiana Department of Correction also reported that only 1.05% of released sex offenders returned to prison for a new sex offense within three years. Indiana Dep’t of Corr., *Indiana Department of Corrections Recidivism Rates Decrease for 3rd Consecutive Year* (2009) <http://www.in.gov/idoc/files/IDOCRecidivism.pdf>. Similarly, the Minnesota Department of Corrections found that 6% of sex offenders were convicted of a new sex crime and 3% were reincarcerated. Minnesota Dep’t of Corr., *Sex Offender Recidivism in Minnesota* (2007). In that study, sex offenders were less likely to recidivate than all other offenders. *Id.*

Moreover, the likelihood that a person will commit a new sex crime declines considerably over time, making lifetime registration and other lifetime restrictions inappropriate in most cases. Karl Hanson et al., *High Risk Sex Offenders May Not Be High Risk Forever* J. of Interpersonal Violence (in press) (2013); P. Howard, *Hazards of different types of reoffending*, UK Ministry of Justice Research Series (2011); A. Harris & Karl Hanson, *Sex offender recidivism: A simple question*,

Report, Public Safety Canada (2003).¹ Research has indicated that the longer a sex offender remains offense-free in the community, the risk for re-offense decreases greatly. *Id.* Offenders who are initially classified as “high risk” can also reduce their likelihood of reoffending over time. Hanson, *High Risk Sex Offenders May Not Be High Risk Forever*, supra. After enough years offense free in the community, the likelihood that a registrant will commit a new sex offense drops to the same likelihood that an “out of the blue” sexual offence is committed by a person with no history of a sexual crime. *Id.* at 9-11; Hanson Decl. 1 (Pl. Exh. 79); Levenson Dep. 130-137 (Pl. Exh. 9). Thus, broadly applied lifetime restrictions (e.g. registration) neither enhance nor are rationally connected to the government’s public safety goals and do not justify the tremendous resources expended to enforce them.

Research has also consistently indicated that reoffending is not related to the proximity of an offender’s residence to schools, daycares, or other youth centers. The location of a sex offender’s residence does not influence where a crime may occur and research has consistently shown that overbroad residence restrictions do not reduce recidivism. Amanda Agan, *Sex Offender Registries: Fear without*

¹ This decrease in risk is true for all offenders, not just sex offenders: the longer any offenders remain offense-free in the community, the lower their chance of coming into contact with the justice system again. Megan C. Kurlychek et al., *Scarlet Letters and Recidivism: Does an Old Criminal Record Predict Future Offending?*, 5 *Criminology & Pub. Pol’y* 483 (2006) (finding that after 6 or 7 crime-free years, the risk of committing a new offense begins to approximate the risk of new offenses among persons with no criminal record).

Function?, 54 J.L. & Econ 207-239 (2011). See also, Matt Nobles, Jill S. Levenson, & Tasha J. Youstin, *Effectiveness of Residence Restrictions in Preventing Sex Offense Recidivism*, 58 Crime & Delinquency 612-642 (2012) (finding that implementing residence restrictions did not decrease sex crime arrests or recidivism, “suggesting that the residence restriction did not achieve its intended goal of reducing recidivism”); Paul Zandbergen, Jill Levenson, & Timothy Hart, *Residential Proximity to Schools and Daycares: An Empirical Analysis of Sex Offense Recidivism*, 37 Criminal Justice and Behavior 482-502 (2010) (finding no significant relationship between reoffending and proximity to schools or daycares); Minnesota Dep’t of Corr., *Residential Proximity & Sex Offense Recidivism in Minnesota 2* (2007) (“Not one of the 224 [recidivist] sex offenses [studied] would likely have been deterred by residency restrictions”); Colorado Dep’t of Public Safety, Division of Criminal Justice, *Report on safety issues raised by living arrangements for and location of sex offenders in the community* (2004) (finding no evidence that residence restrictions prevent repeat sex crimes and that residency was not linked to crime-location). Even for sex offenders identified by risk assessment as high risk, there is no evidence that residential proximity to parks or schools played a role in re-offense. Minnesota Dep. of Corr., *Level three sex offenders residential placement issues* (2003).

Multiple studies have also found that broad public registration and notification requirements create no statistically significant reduction in recidivism – indicating these requirements neither enhance nor are rationally related to the government’s intended goal of preventing sexual abuse. While public registries were created to assist law enforcement and inform the community, research shows that state efforts to make offenders more visible do not necessarily promote public safety.² R. G. Zevitz, *Sex offender community notification: Its role in recidivism and offender reintegration*, 19 *Criminal Justice Studies* 193–208 (2006) (registries were made public to help people protect themselves against future victimization); Association for the Treatment of Sexual Abusers, “Sex Offender Registration & Notification,” <http://www.atsa.com/sites/default/files/ppSOREgNotification.pdf> (registries were initially for law enforcement use only, to assist law enforcement with tracking/monitoring sex offenders and apprehending potential sex crime suspects). In Iowa, for example, the recidivism rate of people subject to the registry (3%) was not statistically significantly different from the recidivism of sex offenders who were not required to register. G. Adkins et al., Iowa Dep’t of Human Rights, *The Iowa sex offender registry and recidivism* (2000). A

² There is evidence that registration requirements without any public notification can reduce sex crimes and, therefore, limited registries may be beneficial to local authorities for monitoring and apprehension purposes. J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?* 54 *J.L. & Econ* 161-206 (2011). While some first time offenders are deterred by public notification sanctions, the imposition of community notification on convicted offenders *ex post* may make them more likely to recidivate. *Id.* at 192.

Washington State study found no statistically significant difference in recidivism rates between offenders who were subjected to community notification and those who were not. S. Matson & R. Lieb, Washington State Institute for Public Policy, *Community notification in Washington State: A 1996 survey of law enforcement* (1996). Likewise, research on New York State's sex offender registration and notification laws revealed no evidence that those laws reduced sexual offending by rapists, child molesters, sexual recidivists, or first-time sex offenders. Jeffrey C. Sandler et al., *Does A Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law*, 14 *Psychology, Public Pol. and Law* 284–302 (2008). Researchers also found that increasing public notification did not decrease rearrest and reincarceration, undermining the alleged utility of these practices. R. G. Zevitz, *Sex offender community notification*, supra.

Given the harm of sexual abuse, it is imperative that laws address the wide range of behaviors and scale of sexual abuse. Currently, Michigan laws do not recognize the distinction of the heterogeneity of sexual offenders which results in laws being created on the erroneous presumption that children are at greatest risk from strangers preying in schoolyards, playgrounds, and neighborhoods (i.e. “stranger danger”). Tragic sexually-motivated crimes broadcast in the media evoke public alarm and emotional response, driving legislation that may have little meaningful impact. Jill Levenson et al., *Public perceptions about sex offenders and*

community notification policies, 7 *Analyses of Social Issues and Public Policy* 1–25 (2007). Sexually motivated child abductions and murders by strangers, which inspire most modern sex offender laws, are actually an incredibly rare danger for children. David Finkelhor et al., National Center for Missing and Exploited Children, *Nonfamily Abducted Children: National Estimates and Characteristics* (2002). *See also*, Zevitz, *Sex offender community notification*, *supra* (finding that none of the recidivistic offenses in their study sample were for predatory sex crimes involving strangers).

By focusing on “stranger danger”, sex offender laws steer the community’s focus away from more likely perpetrators. The Department of Justice found that 93% of child sexual abuse victims were abused by a family member or well-known acquaintance. Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, 10 (2000). Moreover, the overwhelming majority of sex offenses are committed by first-time sex offenders: 95.88% of all sexual offense arrests involved first-time sex offenders, “casting doubt on the ability of laws that target repeat offenders to meaningfully reduce sexual offending.” Sandler et al., *Does A Watched Pot Boil*, *supra* (also finding that 96% of rapes and 94% of child molestations are committed by first time sex offenders). Current laws based on the idea of “stranger danger” result in the public focusing the majority of their attention on anomalous situations

(i.e. strangers) rather than protecting their children from known and trusted individuals whom research has consistently indicated are much more likely to offend against a child. Bureau of Justice Statistics, *Sexual Assault of Young Children*.

Prevailing thought erroneously assumes that harsher, broad-based sex offender laws protect children more effectively. However, overbroad restrictions may have the unintended consequence of increasing recidivism because they are confusing and hamper reentry efforts. Restrictions should be crafted with proper precision and clarity, rather than driven by fear and misconceptions.

II. Vague and/or broad-based restrictions/requirements for sex offenders can impede successful reentry, may result in increased recidivism, and undermine the state's public safety efforts.

Broad-based and/or vague sex offender restrictions can inhibit successful reintegration into the community, which may result in the unintended consequence of increasing, rather than decreasing, the likelihood of a re-offense. Given that sex offenders are not identical and present with different levels of risk, individualized case management and restrictions (based upon an offender's identified level of risk) provides more informative and recognizable information to the public, assists law enforcement in more effective monitoring of risk-related behaviors, and facilitates effective reentry by allowing opportunities for positive support and ensuring basic lifestyle stability.

Sex offenders who received positive support through stable housing, family relationships, positive friendships, community support, access to treatment, and employment have significantly fewer probation violations and re-offenses than those with no support or negative support. *See, e.g.,* Colorado Dep't of Public Safety, *Report on Safety*, supra; Joan Petersilia, *When Prisoners Come Home: Parole And Prisoner Reentry* (Oxford Univ. Press 2003); R. G. Zevitz & M. Farkas, U.S. Department of Justice, Office of Justice Programs, *Sex offender community notification: Assessing the impact in Wisconsin* (2000). Public policies that impede these sources of stability and support can actually have the unintended consequence of undermining public safety.³*Id.* Research has indicated that risk factors such as unemployment, isolation, depression, and housing instability may correlate with increased recidivism for sex offenders. Sex Offender Management Board, *White Paper on Use of Residence Restrictions as a Sex Offender Management Strategy* (2009); Jill Levenson & Leo Cotter, *The Impact of Sex Offender Residency Restrictions: 1000 Feet from Danger or One Step from the Absurd?* 49 Int'l J. of Offender Therapy and Comp Criminology 168 (2005); Colorado Dep't of Public Safety, *Report on Safety*, supra; Karl Hanson & Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis*

³ It should be noted that, arguably, restricting Internet access limits the support-factors that reduce recidivism. The Internet is a critical means – and sometimes only means – for finding employment, fulfilling job duties, finding housing, and maintaining prosocial connections with family, friends, and the community.

(2004); Candace Kruttschnitt et al., *Predictions of Desistance Among Sex Offenders: The Interactions of Formal and Informal Social Controls*, 17 *Just. Quarter.*, No. 1, 67-87 (2000).

Access to employment is an important factor in reducing the likelihood of reoffending for all offenders. *See e.g.*, ABA Justice Kennedy Comm'n, *Reports With Recommendations to the ABA House Of Delegates*⁷ (2004) ("The most important predictive factor as to whether an offender will become a recidivist appears to be employment. Those who find work are less likely to re-offend. Those who cannot find work are more likely to engage in criminal acts. To the extent that legal and attitudinal barriers to employing people with convictions can be removed, the chances of employment increase and the likelihood of recidivism decreases."). Barriers to financial stability increase recidivism, while gainful employment for offenders decreases recidivism. *See e.g.*, P. Gendreau et al., *A Meta-Analysis of the Predictors of Adult Crime Recidivism: What Works*, 34 *Criminology* 575-607 (1996); Kruttschnitt et al., *Predictions of Desistance*, *supra*.

Challenges to obtaining housing (e.g. geographic exclusion zones and public registries) also inhibit successful reentry and may increase an offender's risk for re-offense. Access to housing enables more effective supervision and monitoring of sex offenders in the community and allows people to positively reconnect with the community, provide care for dependents, and reduce the risk of recidivating.

Bureau of Justice Assistance, U.S. Dep't of Justice, Council of State Governments, *Reentry Housing Options: The Policymakers' Guide*, vii (2010); Council of State Governments, *Zoned Out: States Consider Residency Restrictions for Sex Offenders*, Public Safety Brief, National Legislative Briefing: Sex Offender Management Policy in the States (2008).

Residence restrictions, like Michigan's geographic exclusion zones, destabilize sex offenders by limiting access to available housing, increasing transience and homelessness, and creating barriers for participation in treatment, employment, and engagement with support systems – inadvertently exacerbating factors correlated with increased recidivism. *See e.g.*, Levenson & Cotter, *Impact of Sex Offender*, *supra*; Jill Levenson et al., *Where for Art Thou? Transient Sex Offenders and Residence Restrictions*, Criminal Justice Policy Review (2013). Furthermore, the vague structure of Michigan's geographic exclusion areas result in difficulties for both law enforcement and offenders in interpreting the requirements which creates obstacles with implementation and navigation of those laws. This also results in a higher likelihood that offenders will experience destabilizing factors, such as homelessness, limited accessibility to treatment and support networks, hopelessness and anxiety, which may increase the likelihood for relapse. *Id.* Additionally, landlords may be reluctant to rent to sex offenders because this triggers community notification and the home address becomes

publically available on the online registry. Since research has indicated that geographic exclusion zones are counterproductive and show no evidence of reducing crime, residence restrictions should be applied in an empirically guided and narrowly tailored manner.

Finally, several recent studies revealed that public registries may result in an increased risk for recidivism. Publication of a sex offender's identity, home address, place of work, and other identifying information can profoundly affect the offender's ability to remain offense free in the community due to stressors (shame, isolation, anxiety, and depression) that can trigger recidivism. Jill Levenson & Leo Cotter, *The Effects of Megan's Law on Sex Offender Reintegration*, 21J. Contemp. Crim. Just., 298-300 (2005); Richard Tewskbury, *Collateral Consequences of Sex Offender Registration*, 21J. Contemp. Crim. Just 67-81 (2005); Human Rights Watch, *No Easy Answers, Sex Offender Laws in the U.S.*, vol. 19, no. 4(G), 62 (September 2007). Research suggests that giving registration information to the public "encourage[s] recidivism among registered offenders, perhaps because of the social and financial costs associated with the public release of their criminal history and personal information." J.J. Prescott & Jonah E. Rockoff, *Do Sex Offender Registration and Notification Laws Affect Criminal Behavior?*, 54 J.L. & Econ 161-206 (2011). Another study shows that "an offender who should have had to register appears to behave no differently, or possibly worse, than one who did

not have to register. If anything, registered offenders have higher rates of recidivism.” Amanda Agan, *Sex Offender Registries*, supra at 229. As with geographic exclusion zones, social science research demonstrates that overbroad registration requirements often has the unintended consequence of weakening, rather than strengthening, community safety and therefore should be applied in an empirically based, narrowly tailored manner.

III. Michigan’s sex offender laws expend considerable taxpayer dollars and law enforcement resources in an inefficient and counterproductive manner.

Michigan’s sex offender scheme comes at a high cost for the community. Michigan spends time and resources to enforce vague, “impossible”, and broad-based laws and restrictions for sex offenders, rather than maximizing the potential funding for prevention programming, victims’ services, and increased monitoring of high risk offenders. States incur significant costs as they attempt to comply with SORNA, including the costs of new personnel, new software, additional jail and prison space, court and administrative costs, and law enforcement costs. Council of State Governments, *SORNA and Sex Offender Management Policy in the States 5* (2010).

Given that sex offenders present with differing levels of risk for re-offense and the risk of reoffending decreases significantly the longer an offender is offense free in the community, it becomes difficult to justify the notable costs to monitor,

register, and otherwise enforce broad-based, lifetime restrictions for offenders. Hanson, *High Risk Sex Offenders May Not Be High Risk Forever*, supra; see Section I herein. Offenders assessed as “low risk” have a much lower risk of sexual reoffending from the outset. *Id.* For sex offenders identified as medium or high risk, their risk for re-offense decreases significantly after the first five years offense free in the community and, the longer they remain offense free in the community, their risk for re-offense eventually becomes similar to the likelihood of an offense being committed by a person with no sexual crimes in their history. *Id.*

“Rather than considering all sexual offenders as continuous, lifelong threats, society will be better served when legislation and policies consider the cost/benefit break point after which resources spent tracking and supervising low-risk sexual offenders are better re-directed toward the management of high-risk sexual offenders, crime prevention, and victim services.” Harris & Hanson, *Sex offender recidivism*, supra at 12. According to the National Alliance to End Sexual Violence, resources allocated for the management of convicted sex offenders should primarily be directed to those at highest risk of re-offense. National Alliance to End Sexual Violence, “Community Management of Sex Offenders,” <http://endsexualviolence.org/where-we-stand/community-management-of-sex-offenders>.

Unclear and broad-based policies can also drive sex offenders underground, away from law enforcement monitoring and treatment programs. Human Rights Watch, *No Easy Answers*, supra at 79. The resulting isolation, lack of employment, unstable housing, and inability to maintain social connections make sex offenders harder to track/monitor and more likely to re-offend. Levenson & Cotter, *Impact of Sex Offender*, supra; Hanson & Morton-Bourgon, *Predictors of Sexual Recidivism*, supra; Sex Offender Management Board, *White Paper*, supra; Kruttschnitt et al., *Predictions of Desistance*, supra.

Laws limiting housing are costly for law enforcement to impose and, instead of increasing community safety, they often undermine law enforcement's ability to protect the public. These laws also increase transience and homelessness, interfering with the state's public safety goals like tracking, monitoring, and facilitating successful reintegration for sex offenders. Levenson et al., *Where for Art Thou*, supra; Levenson & Cotter, *Impact of Sex Offender*, supra. According to the American Correctional Association, the world's largest professional organization of corrections practitioners, residence restrictions are "contrary to good public policy" because they "create disincentives for predatory sex offenders to cooperate with responsible community corrections agencies" and create "unintended consequences" that undermine public safety. Am. Corr. Ass'n, *Resolution on Neighborhood Exclusion of Predatory Sex Offenders* (Jan. 24, 2007).

In a strong statement, the Iowa County Attorneys Association announced that “there is no demonstrated protective effect of the residency requirement that justifies the huge draining of scarce law enforcement resources in the effort to enforce the[m].” Iowa County Attorneys Association, *Statement On Sex Offender Residency Restrictions In Iowa*, December 11, 2006.

Lengthy, broad-based registration requirements without consideration of individual risk also drain public dollars. The exact cost of operating Michigan’s SORNA-compliant sex offender registry is unknown. Neither the legislature nor the State Police have conducted any study of the cost of setting up and operating the registry. Hawkins Dep. 18-19 (Pl. Exh. 19). The Michigan Sex Offender Registration (SOR) unit’s annual budget is about \$1.2M, of which \$600K is for database support and \$600K is for staff, supplies, and training. These figures do not include any of the costs imposed on local law enforcement, the court system, or the Michigan Department of Corrections. Johnson Dep. at 283-284 (Pl. Exh. 15).

The cost of maintaining Michigan’s sex offender registry will only increase over time, with about 2,000 new registrants added annually. Legislative Services Bureau Report on SORA 2013 (Pl. Exh. 92); Total Number On SOR By Year (Pl. Exh. 53). Almost three-quarters of all registrants are required to register for life. Total Number of Offenders By Tier (Pl. Exh. 54). As the registered population ages, more and more law enforcement resources will be spent monitoring people

who are further and further away from their criminal past. Ironically, the registrants who are most successful at rehabilitating themselves will consume the most law enforcement resources because these people have to report most often – every time they buy or sell a car, take a class, add an internet ID on a group website, travel, etc. Presumably, such registration-triggers are even more likely to happen as these low-risk registrants attain middle-class and middle-age status.

If Michigan had elected not to become SORNA-compliant, it would have lost 10% of its Byrne Judicial Access Grant, roughly– federal money that comes to states for use by prosecutors and local law enforcement. The Grant reduction would have been roughly \$1M (based on 2011 estimates). Hawkins Dep 18 (Pl. Exh. 19).

When several other states were faced with the same decision, their legislature studied the projected cost of SORNA compliance – including the cost to local law enforcement – and determined that the loss of 10% of its Byrne funds would be far less than the cost of complying with the Adam Walsh Act. The State of California Sex Offender Management Board determined that the cost of compliance would exceed \$32 million, and issued a strong statement that “California State Legislature, Governor and citizens should elect not to come into compliance with the Adam Walsh Act.” California AWA Position Statement (Pl. Exh.. 73). California still uses an individual risk assessment tool for all offenders

to determine where they should appear on the registry. Similarly, Texas determined that the real costs of implementing SORNA would range from \$14 M to \$25.9 M a year, which was far more than potentially lost Byrne funds. Texas Study (Pl. Exh. 75). According to an analysis by the Justice Policy Institute, in all 50 states, costs for implementing SORNA exceeded the potential loss of 10% of the Byrne Grant funding and Michigan, specifically, would spend over \$16M on SORNA compliance in its first year. Justice Policy Institute. “What Will It Cost States to Comply with the Sex Offender Registration and Notification Act?” *available at* http://www.justicepolicy.org/images/upload/08-08_FAC_SORNACosts_JJ.pdf.

Fewer than half the states have elected to substantially adopt SORNA, and costs associated with SORNA-implementation were one of the most frequently reported challenges for nonimplemented jurisdictions (reported by 23 out of 27 surveyed jurisdictions). United States Government Accountability Office, *Report to the Subcommittee on Crime, Terrorism, and Homeland Security, Committee on the Judiciary, House of Representatives, Sex Offender Registration and Notification Act: Jurisdictions Face Challenges to Implementing the Act, and Stakeholders Report Positive and Negative Effects* 19 (2013). Additionally, criminal justice officials such as law enforcement noted concerns that: SORNA creates additional workload, conviction-based tiering is not a good indicator of risk

of reoffending, and SORNA causes “difficulties in sex offenders’ ability to reintegrate into the community.” *Id.* at 26.

IV. Implementation of narrowly tailored restrictions based on comprehensive risk assessment will improve public safety in Michigan.

In order to maximize public safety, it is important to recognize that vague, broad-based restrictions come at a high cost to the community, do not enhance victim support, and do not proportionally distribute resources to protect the community. Applying restrictions based on probability of individual re-offense renders laws more narrowly tailored and more related to the goals of public safety. People can be evaluated and classified for current risk and subject to appropriately restrictive sanctions. Association for the Treatment of Sexual Abusers, “Risk Assessment | ATSA,” <http://www.atsa.com/risk-assessment>. Researchers have isolated factors associated with recidivism and developed “actuarial tools” for meaningful risk assessments of future sex offense recidivism, which can be used to individualize the application of specific restrictions. *Id.* Sex offenders are also most accurately assessed through these empirically-based actuarial risk assessment tools, not by the legal definition or seriousness of their conviction. Kristin Zgoba et al., *A Multi-State Recidivism Study Using Static-99R and Static-2002 Risk Scores and Tier Guidelines from the Adam Walsh Act*, Research report submitted to the National Institute of Justice (2012); National Alliance to End Sexual Violence, “Community Management of Sex Offenders,” *supra*.

Conviction based systems typically overestimate or underestimate an offender's risk, are far more likely to obscure important differences among registered offenders, and endorse a "one size fits all" approach for classification of sex offenders. Zgoba et al., *A Multi-State Recidivism Study*, supra. Communities are safer "when states adopt empirically derived risk assessment methods to validly, reliably, and discriminately identify high risk offenders." Jill Levenson & R.A. Tewksbury, *Collateral Damage: Family Members of Registered Sex Offenders*, 34 *American Journal of Criminal Justice* 54-68, 65-66 (2009). Reserving restrictions and public disclosure for those who pose the greatest threat allows citizens to be appropriately warned about and protected from true dangers. *Id.*

Individualizing restrictions based upon an offender's identified risk factors also creates responsible use of public safety resources, as resources are not being diluted by broad-based application to a heterogeneous population. National Alliance to End Sexual Violence, supra. This allows law enforcement to focus their limited time on more intensive monitoring of high risk offenders, while also increasing potential funding for sexual abuse prevention, victim services, enforcement efforts, and offender treatment. Levenson & Tewksbury, *Collateral Damage*, supra. Thus, restrictions based on individualized risk assessment allow resources to be more efficiently distributed to maximize community safety. *Id.*

Narrowly tailored restrictions should be clearly defined and explain key

terms, to increase compliance. When offenders are unable to understand and navigate the laws that affect them, offenders feel hopelessness, disempowerment, shame, depression, or anxiety – factors that can trigger relapse – or to “go underground” altogether. Levenson & Cotter, *Impact of Sex Offender*, supra at 169.

CONCLUSION

In order to achieve our shared goals of community safety and the prevention of sexual abuse, Michigan must have clear, narrowly tailored sex offender restrictions, which are rationally related to public safety, guided by research, and applied in an individualized manner through the use of empirically derived risk assessment. Michigan’s sex offender scheme is vague and broad-based which results in application of laws which are not supported by empirical studies or scholarly research. Therefore, these laws contribute to an increased risk for re-offense, which has the unintended consequence of weakening, rather than strengthening, public safety. In Michigan, restrictions are often vague, impossible to navigate, or broad-based – all factors which result in threats to public safety. As our common goal is to increase public safety and prevent sexual abuse, the current scheme would benefit from incorporation of recent research to enhance law enforcement efforts, improve allocation of limited state resources, and increase successful reintegration for sex offenders returning to the community. For the

foregoing reasons, the amici respectfully urge the court to grant the declaratory and injunctive relief sought by the sought by the Plaintiffs.

Respectfully submitted,

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Certificate of Service

This brief, along with the accompanying motion and brief for leave to file brief as *amici curiae*, was filed using the Court's ECF system, which provides same-day email service to all counsel of record.

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