

Safe & Just Michigan

Written Statement of
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Thank you, Chairman Filler, and to all of the members of the committee for allowing me to testify. My name is Joshua Hoe and I am a policy analyst at Safe & Just Michigan a criminal justice research and advocacy organization based in Lansing.

Any replacement registry bill that does not ensure more are removed from the registry than added cannot make Michigan safer.

- HB 5679 Makes Michigan Less Safe
- HB 5679 Does Not Address the Concerns of the Courts
- HB 5679 Is Not Evidence-Based Reform
- Underreporting is not an Argument in Favor of HB 5679
- Conclusion and Recommendations

I urge everyone to oppose this legislation.

HB 5679 Makes Michigan Less Safe

1. This legislation maintains public registration which directly increases the risk of recidivism.

The most complete and respected study ever done on this question concluded that while private registries can have a positive impact on recidivism, public registration increases recidivism.¹

2. HB 5679 creates a false sense of security.

Over 90% of sexual offenses are committed by first-time offenders² and over 85% are committed by friends and family members, not by strangers³, this bill addresses neither

¹ J.J. Prescott & Jonah E. Rockoff, Do Sex offender Registration and Notification Laws Affect Criminal Behavior?, 54 J.L. & Econ. 161 (2011).

² Sandler et al., A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law, 14 PSYCHOLOGY, PUBLIC POL AND LAW 284–302 (2008)

³ Michigan State Police Data supported by multiple studies

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and continues to focus on the people least likely to re-offend instead of the people most likely to offend.

3. This legislation wastes law enforcement resources and distracts law-enforcement focus.

How law enforcement uses its resources is zero-sum and every bit of time and resources spent doing, for instance, registration sweeps, trades off with the investigation of new crimes:

“In fact, the movement to register more sex offenders for longer durations is likely to become counterproductive. The nationwide accumulation of sex offenders is nearing three-quarters of a million registrants (National Center for Missing and Exploited Children, 2010). As the numbers grow, law enforcement resources are spread thin, and the ability of the public to discern truly dangerous offenders is diluted. In a time when budgets are overburdened and correctional institutions are reconsidering sentencing options for other technical breaches and nonviolent offenses, increased penalties for FTR seem counterintuitive.”⁴

Research consistently shows that there is no evidentiary basis for registration requirements⁵ or linkage between violating registration requirements and the commission of new sex crimes⁶ but we continue to use these requirements as a basis for punishment, arrest, and incarceration. This is not a good use of law enforcement time and resources.

4. This bill also makes Michigan decidedly less safe for Michiganders on the registry.

⁴ Zgoba and Levenson, Failure to Register As a Predictor of Sex Offense Recidivism: The Big Bad Wolf or Red Herring, *Sexual Abuse, A Journal of Research and Treatment*, 2012, 24 (4) 328-349

⁵ Levenson, J. S., Letourneau, E., Armstrong, K., & Zgoba, K. (2010). Failure to register as a sex offender: Is it associated with recidivism? *Justice Quarterly*, 27, 305-331.

⁶ Letourneau, E., Levenson, J. S., Bandyopadhyay, D., Sinha, D., & Armstrong, K. (2010). Effects of South Carolina's sex offender registration and notification policy on adult recidivism. *Criminal Justice Policy Review*, 21, 435-458.

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Just nine weeks ago I had to waste law my own time and law enforcement time when I became the target of a phishing scam⁷ which was only possible as a result of all of my private information being made public by the registry. We are citizens and the state makes us all radically vulnerable to being targeted, harassed, and even attacked.

Currently, the Michigan registry has over 44,000 people and counting. Most research suggests that a small number of people are at risk of recidivism⁸, that the risk of recidivism declines over time⁹, and that being on the registry creates substantial insecurity through lack of stable housing, lack of employment, and the stress of constantly being surveilled and monitored¹⁰.

My suggestion would be a strong and uniform presumptive graduation scheme for anyone who has remained crime-free for over ten years. As a working group for the Chief Justice of the State Supreme Court of Ohio concluded a few years ago¹¹:

“There are four strategies which can incorporate scholarly findings into sex offender management practices, all of which necessitate restoring some discretion to the judiciary in sanctioning sex offenders. First, legislation should be modified to authorize judges to determine when individual low-level sex offenders will be subject to registration duties. Second, laws should permit judges to consider risk assessments in managing sex offenders. Third, legislation should enable judges to deregister first time sex offenders after a reasonable period of full compliance with registration obligations. Finally, sex offender management should incorporate the proven practices associated with problem-solving courts “

⁷ Police: Telephone Scam Involving Local Sex Offenders in San Angelo, 2019,

<https://ktxs.com/news/local/police-telephone-scam-involving-local-sex-offenders-in-san-angelo>

⁸ You can read a summary of the evidence here AMICI CURIAE BRIEF OF THE ASSOCIATION FOR THE TREATMENT OF SEXUAL ABUSERS, CITIZENS ALLIANCE ON PRISONS AND PUBLIC SPENDING, HUMAN RIGHTS DEFENSE CENTER, MICHIGAN CHAPTER OF THE NATIONAL ASSOCIATION OF SOCIAL WORKERS, MICHIGAN COUNCIL ON CRIME AND DELINQUENCY, NORTHWEST INITIATIVE, OHIO JUSTICE AND POLICY CENTER, PROFESSIONAL ADVISORY BOARD TO THE COALITION FOR A USEFUL REGISTRY, AND THE SENTENCING PROJECT http://www.sado.org/content/pub/10761_CAPP-Amici-Brief.pdf

⁹ Hason et al, Reductions In Risk Based on Time Offense-Free In the Community: ONce a Sexual Offeder, Not Always a Sexual Offender, 2018 Psychology, Public Policy, and Law

¹⁰ See Prescott & Rockoff supra note 1

¹¹ Sex Offender Registration Ad Hoc Recommendations, Office of the Chief Justice of the Supreme Court of Ohio,

<https://www.supremecourt.ohio.gov/Boards/Sentencing/Materials/2016/March/SORecommendations.pdf>

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Our goal should be to ensure more people graduate from registration than are placed on the registry annually.

HB 5679 Does Not Address the Concerns of the Courts

I get paid to analyze legislation for a living and after reading HB 5679 over ten times I still could not explain:

- How this bill would function for people who were sentenced before 2011?
- How this bill addresses the ex-post-facto problem for people sentenced before 2011?
- How this bill does anything but create even more unconstitutional vagueness?

I have personally taught classes in registration compliance for registrants and classes for social workers who want to understand compliance¹² and I can tell you from experience that our registry is already incredibly complicated and ill-defined.

If the point is compliance, it is incredibly important that every person required to register understands in no uncertain terms what the requirements for registration are. Failure to register, or to register or de-register information correctly is often a felony punishable by imprisonment, it is arbitrary, cruel, and costly to leave people at a loss on how to comply.

HB 5679 is not Evidence-Based Reform

As a policy analyst, I believe that public policy should always be evidence-based. Judge Batchelder suggested there is an affirmative requirement for the state to prove their regulations are effective in the Doe's v. Snyder decision:¹³

¹² I taught a class in registry compliance for Michigan Citizens for Justice (a support group) and I have taught a class offered by MCCD (Now the Michigan Center for Youth Justice) to help social workers understand the registry requirements their clients deal with.

¹³ Doe's v. Snyder, 6th Circuit Court of Appeals,
<https://www.opn.ca6.uscourts.gov/opinions.pdf/16a0207p-06.pdf>

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“Further, while the statute’s efficacy is at best unclear, its negative effects are plain on the law’s face. As explained above, SORA puts significant restrictions on where registrants can live, work, and “loiter,” but the parties point to no evidence in the record that the difficulties the statute imposes on registrants are counterbalanced by any positive effects.”

The opposition to registries in the research is deep and bipartisan:

- Our Attorney General has published multiple well-researched Amicus briefs¹⁴
- The Right-leaning group Reason consistently oppose the registry¹⁵
- The vast majority of researchers oppose the registry
- The Association for the Treatment of Sexual Abusers opposes the registry¹⁶.

I would strongly suggest people in this body start to consider investing in prevention, education, and therapy instead of investing more in a failed system of registration. At the very least, no part of the registry should be adopted unless it is based on peer-reviewed evidence.

Underreporting Is Not An Argument In Favor of HB 5679

If registration works to send a strong signal:

- Why, after decades of registration, would sex crimes continue to be underreported?

¹⁴ BRIEF OF AMICUS CURIAE MICHIGAN ATTORNEY GENERAL DANA NESSEL STATE OF MICHIGAN IN THE SUPREME COURT PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v PAUL J. BETTS, JR., Defendant-Appellant. / Supreme Court No 148981 Court of Appeals No 319642

https://www.michigan.gov/documents/ag/Recd.148981_Betts_SORA_br_MSC-FINAL_marked_645819_7.pdf

¹⁵ Reason has hundreds of articles critical of the registry, they have also hosted debates on the topic and consistently opposed, for instance, registration sweeps

<https://reason.com/2019/03/22/operation-karma-sex-offender-registry/>

CATO published

¹⁶ ATSA has consistently opposed the registry, you can find their journal and blog here

<https://www.atsa.com/>

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- How is it possible these laws enhance deterrence if the majority of sex crimes continue to be underreported?

Registries can increase underreporting because a large percentage of victims say that their biggest fear is being identified and registries often make the identification of survivors of crime easier.¹⁷ Registration can also create an incentive to underreport (for instance when the survivor is also a family member, they may be less likely to report).¹⁸

People on the registry are also more surveilled than people who are not on the registry which means the statistics on recidivism are more likely to be correct. To suggest that people on the registry are committing recidivist sex crimes admits that registration is not a solution to the problem and suggests that the registry fails to deter. Supporters of registration cannot have it both ways. The evidence suggests that people who have not had prior contact with the police are most likely to be arrested, charged, and prosecuted for sex crimes.¹⁹

Since registration encourages underreporting and people who are not on the registry are the most likely to commit new sex crimes, I would suggest underreporting is an argument against registries and HB 5679.

Conclusion

I am a civil libertarian, I have one core belief which is that liberty should never be suspended cheaply.

¹⁷ ELIZABETH REINER PLATT 2013 “GANGSTERS TO GREYHOUNDS: THE PAST, PRESENT, AND FUTURE OF OFFENDER REGISTRATION” (NYU Review of Law and Social Change)

¹⁸ ATTORNEY GENERAL DANA NESSEL, BRIEF OF AMICUS CURIAE MICHIGAN STATE OF MICHIGAN IN THE SUPREME COURT PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v PAUL J. BETTS, JR., Defendant-Appellant. / Supreme Court No 148981 Court of Appeals No 319642

https://www.michigan.gov/documents/ag/Recd.148981_Betts_SORA_br_MSC-FINAL_marked_645819_7.pdf

¹⁹ Melissa Hamilton 2017 “Briefing The Supreme Court: Promoting Science of Myth?” (Emory Law Journal)

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Our Governor has been getting attacked for suspensions of liberty that, worst-case scenario, will only last for several months.²⁰ At the same time, what we are talking about with HB 5679 are suspensions of liberty that often last forever,

As Professor of Law Paul Rheingold put in a recent Amicus brief ²¹

“Massive social control and branding of former sex offenders is not a policy, it is a reaction based on unwarranted fears, myths, and misconceptions. To pile on lifetime reporting requirements, on-line public notification, geographic exclusion zones, etc., without regard to their efficacy or to the collateral harm they cause, is not only pointless but teaches us what governments cannot do: treat an entire demonized group as if they are currently dangerous when we know that most of them are not.”

We should all be aggressively working against the Sex Offense Registry writ large. However, if we do not end registration we should immediately:

1. End distance requirements
2. Make the registry a law-enforcement-only registry
3. Create a presumptive ten-year graduation mechanism
4. End any requirements that are not supported by peer-reviewed evidence

At the very least, I encourage people to oppose HB 5679.

For reference purposes, I pleaded guilty to NCL. 750.145C3, and 10697. I returned from prison in July of 2013.

Thank you for your time.

²⁰

<https://www.npr.org/sections/coronavirus-live-updates/2020/04/15/835250693/michigan-stay-at-home-order-prompts-honking-traffic-jam-protest>

²¹ Friend of the Court Brief in Support of Defendant on Behalf of Safe & Just Michigan, Michigan Chapter of NASW, Michigan Center for Youth Justice, Northwest Initiative ARRO, Coalition for a Useful Registry, Michigan Collaborative to End Mass Incarceration, 2020