

March 12, 2018

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

Re: Proposed 30-Day Budget Amendments to Executive Law § 259-c(14) and
Social Services Law § 131-y

Governor Cuomo:

Our organizations are writing to urge you to reconsider your proposed amendments to Executive Law § 259-c(14) and Social Services Law § 131-y which would impose further restrictions on the travel and housing options available to New York's SORA registrants.

Your current proposal – much like the juvenile life-without-parole sentences driven by the now-discredited “super-predator” myth and the 100-to-1 federal crack/powder sentencing ratio premised on a false theory that crack and powder cocaine were different – has more basis in hysteria than in either fact or science. If passed, this law will significantly contribute to mass incarceration while likely undermining public safety. A truly progressive legislative agenda demands forward-thinking, evidence-based, data-driven solutions to child abuse, not counterproductive laws built on fear and misconceptions.

The current movement and residence restrictions are unconstitutional, unenforceable, and counterproductive to public safety.

Protecting children from sexual abuse is unquestionably one of our government's most compelling and important objectives. However, blanket residence and movement restrictions do not further public safety.

Executive Law § 259-c(14) prohibits people who are classified as Level Three sex offenders and people who were convicted of committing sexual offenses against children from setting foot within 1,000 feet – approximately four city blocks – of school grounds while on parole or post-release supervision (“PRS”). As implemented, this restriction banishes these individuals from almost all of New York City and large areas of New York State.¹

¹ Attached is a map published in *The Wall Street Journal* in 2016 which shows the areas of New York City that are off-limits to people subject to § 259-c(14).

No empirical evidence demonstrates that residence/movement restrictions make children safer.² Despite popular perception, recidivism rates for individuals who have committed sex offenses are lower than for individuals who commit almost any other category of crime.³ And in the rare circumstance that a person does reoffend, it is virtually never a product of their proximity to a school.⁴ To the contrary, 93% of child sex abuse is committed by a family member or a person the child already knows – not by a predatory stranger.⁵

Perhaps counter-intuitively, laws like Executive Law § 259-c(14) actually increase the danger to the public by relegating those on parole or PRS to the margins of society; by preventing them from accessing much-needed housing, employment, medical and mental health treatment; by isolating them from social support systems; and by undermining reintegration. Studies consistently show that people with positive support systems have significantly lower recidivism rates than those with poor or no support and that residence restrictions have a counterproductive and destabilizing effect on rehabilitation.⁶

² Jesse Singal, *Sex Offenders Housing Restrictions Are Pointless*, Slate.com (Aug. 25, 2014), available at www.slate.com/blogs/xx_factor/2014/08/25/laws_restricting_where_sex_offenders_can_live_don_t_accomplish_anything.html; *The Pointless Banishment of Sex Offenders*, N.Y. Times (Sept. 8, 2015), available at <https://www.nytimes.com/2015/09/08/opinion/the-pointless-banishment-of-sex-offenders.html>; Association for the Treatment of Sexual Abusers, *Sexual Offender Residence Restrictions* (“ATSA Report”), at 2 (Aug. 2, 2014), available at <http://www.atsa.com/pdfs/Policy/2014SOResidenceRestrictions.pdf>.

³ U.S. Dep’t of Justice, Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994*, at 1 (Nov. 2003), available at <https://www.bjs.gov/content/pub/pdf/rsorp94.pdf>.

⁴ Christopher Lobanov-Rostovsky, *Adult Sex Offender Management*, Sex Offender Management Assessment and Planning Initiative (SOMAPI) Research Brief, U.S. Dep’t of Justice, Office of Justice Programs, at 4 (July 2015) (“Research has demonstrated that residence restrictions do not decrease and are not a deterrent for sexual recidivism.”), available at <https://smart.gov/pdfs/AdultSexOffenderManagement.pdf>; see also Beth M. Huebner et al., *An Evaluation of Sex Offender Residency Restrictions in Michigan and Missouri*, National Criminal Justice Reference Service, at 21-22 (July 2013) (summarizing studies of residence restrictions, including in New York, showing either no change or even slight *increase* in recidivism rates), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/242952.pdf>; Jill S. Levenson & Andrea L. Hern, *Sex Offender Residence Restrictions: Unintended Consequences and Community Reentry*, 9 Just. Res. & Pol’y 59, 61 (2007) (citing studies showing that “residential proximity to schools and parks appeared to be unrelated to sex offense recidivism”; thus, “blanket policies restricting where sex offenders can live are unlikely to benefit community safety”), available at <https://www.innovations.harvard.edu/sites/default/files/105351.pdf>.

⁵ U.S. Department of Justice, Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, at 10 (July 2000), available at <https://www.bjs.gov/content/pub/pdf/saycrle.pdf>.

⁶ *Doe v. Snyder*, 834 F.3d 696, 704-05 (6th Cir. 2016); *People ex rel. Green v. Superintendent of Sullivan Corr. Facility*, 137 A.D.3d 56, 60 (3d Dep’t 2016); ATSA Report at 3.

Executive Law § 259-c(14) is already constitutionally overbroad. It does not provide for individualized assessments of dangerousness⁷; and it applies equally to people who never committed a crime against a child, to children convicted of crimes against other children, and to people who have been rendered immobile by injury or illness (*i.e.*, people who are physically unable to leave their homes). There is no exception for traveling to a job, going to the hospital, attending medical appointments, attending religious services, shopping for food or other daily necessities, or visiting friends or relatives. Thus, in the name of public safety, this law actually impedes rehabilitation.

Executive Law § 259-c(14) also contributes to mass incarceration. Due to the near-impossibility of finding compliant housing in New York City, the Department of Corrections and Community Supervision (DOCCS) is currently holding an unknown number of individuals in prison past their conditional release dates, past their parole eligibility dates, and/or past their maximum sentence dates solely because they lack compliant housing. Those individuals are indefinitely confined until they can be placed in a residential treatment facility – typically a prison – or a compliant homeless shelter. However, the New York City shelter system sets aside no more than ten beds per month for those who are subject to Section 259-c(14).

We have witnessed firsthand the disastrous effects of this law. Time and again, we are required to inform our clients that they will not be released from prison as promised, that they cannot live with their families or friends, and that they cannot return to their home communities. Although we assist in the desperate attempt to locate a qualifying residence, if and when that search fails, our clients are released to overcrowded⁸ homeless shelters, despite having loved ones who are ready and willing to assist in their rehabilitation.

For all of these reasons, public safety requires the *repeal*, not the expansion, of Executive Law § 259-c(14).

⁷ We do not concede that risk assessment instruments like the one used by New York courts are accurate or useful predictors of the likelihood of reoffending.

⁸ New York City is home to the state's largest homeless population – an estimated 70,000 individuals—and its shelters are already overflowing. A recent report found that in 2017, 54% of inmates paroled to New York City went to shelters, and that the conditions in the shelters increased their likelihood of returning to criminal behavior. See Courtney Gross, *The New York Prison-to-Shelter Pipeline*, NY1 (Feb. 27, 2018), available at <http://www.ny1.com/nyc/all-boroughs/politics/2018/02/27/ny1-investigation-more-inmates-released-upstate-prisons-going-into-nyc-shelter-system.html>.

The proposed amendments to Executive Law § 259(c)-14 and Social Services Law § 131-y would exacerbate New York’s severe homelessness problem by banishing even more individuals and by further restricting the few remaining compliant areas of the City and State.

The proposed amendment to Executive Law § 259-c(14) would prohibit anyone convicted of a sex offense against a child under thirteen from being within 1,000 feet of “any facility or institution where pre-kindergarten or kindergarten instruction is provided.” This provision would profoundly exacerbate the problems caused by the existing law, because it renders the four-block radius around each standalone pre-kindergarten and kindergarten program off-limits. This would cover an enormous amount of territory – in New York City alone, there are several hundred standalone pre-kindergartens and Early Education Centers unaffiliated with an elementary school.⁹

The proposed Social Services Law § 131-y seeks to prohibit the placement of people who have been deemed a Level Two or Three under SORA into any emergency housing or homeless shelters used to house families with children. This law will be the first in New York to limit the residency of those classified as Level Two who have not offended against children, bringing hundreds of new individuals within the scope of these unconstitutional restrictions. Further, because those classified as Level Two and Three must register for the rest of their lives, this population would be permanently ineligible for the vital social services at these shelters. Social Services Law § 131-y will also destabilize many families who will have to choose between living apart from a parent or living together on the street.

Have no doubt, these proposed amendments, if enacted, will be costly: New York’s already-crowded prisons will swell with even more parole- or PRS-eligible inmates held past their release dates. A 2015 report found that it costs New York an average of \$69,355 to house a single inmate for one year – the highest amount of any state.¹⁰ More individuals will also end up homeless, clustered in a handful of shelters and prohibited from traveling to their workplaces and their families. The increasing dislocation and alienation of individuals from the programs and resources they need to succeed may also cause recidivism rates to increase. Simply put, these amendments will not make children safer and will come at a tremendous cost to the taxpayer.

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⁹ NYC Dep’t of Education, Pre-K Finder for School Year 2018-19, *available at* <https://maps.nyc.gov/upk/#map-page> (interactive map showing locations of schools – dark blue hand symbols represent standalone pre-kindergartens, while orange hand symbols represent Early Education Centers).

¹⁰ Vera Institute of Justice, *The Price of Prisons* (2015), *available at* <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending>.

Social scientists have studied and continue to research strategies for preventing and intervening in sexual offending behavior. The Department of Justice has even published a report explaining the management techniques that may lead to positive results, such as improvements to supervision and treatment procedures and circles of support and accountability. However, the report was clear when it comes to residence restrictions:

[T]here is no empirical support for the effectiveness of residence restrictions. In fact, a number of negative unintended consequences have been empirically identified, including loss of housing, loss of support systems, and financial hardship that may aggravate rather than mitigate offender risk. In addition, residence restrictions lead to the displacement and clustering of sex offenders into other areas, particularly rural areas. Given the above, expansion of this policy was not recommended by the group of sex offender management professionals attending the SOMAPI forum.¹¹

If New York does not learn the lessons of criminal justice history, it will be doomed to repeat them. Juvenile life without parole sentencing and the federal crack/powder sentencing disparity are two failed criminal justice policies that stand as powerful cautionary tales about the dangers of policymaking based on fear instead of facts. Both laws were driven by a combination of junk science and public hysteria about predatory criminals; and both laws contributed to the mass incarceration crisis in the United States.¹² The proposed amendments to Executive Law § 259-c(14) and Social Services Law § 131-y purport to be part of a “bold, progressive agenda to move New York forward” but, in actuality, they follow the well-documented path of these historical mistakes. If these amendments are implemented, they will certainly move New York backward.

¹¹ Christopher Lobanov-Rostovsky, U.S. Dep’t of Justice, Office of Justice Programs, *Sex Offender Management Assessment and Planning Initiative*, Chapter 8: Sex Offender Management Strategies (2014), available at https://ojp.gov/smart/SOMAPI/sec1/ch8_strategies.html.

¹² Nick Straley, *Miller’s Promise: Re-Evaluating Extreme Criminal Sentences for Children*, 89 Wash. L. Rev. 963 (Oct. 2014) (discussing judicial recognition that juvenile life-without-parole sentences are cruel and unusual because social and medical science demonstrates that adolescents typically age out of impulsive behavior and are more capable of change); Barry C. Feld, *Youth Matters: Miller v. Alabama and the Future of Juvenile Sentencing*, 11 Ohio St. J. Crim. L. 107 (2013) (same); United States Sentencing Commission, *The Crack Sentencing Disparity and the Road to 1:1* (2009), available at https://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2009/016b_Road_to_1_to_1.pdf (discussing how unsupported belief that crack cocaine was more dangerous than powder led to sentencing scheme that disproportionately affected low-income black communities).

For all these reasons, we urge you to withdraw or veto the proposed budget amendment.

Sincerely,

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Office of the Appellate Defender

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Youth Represent

cc: NYS Assembly Leadership
NYS Senate Leadership



Note: Areas shown are calculated based on address points rather than school grounds boundaries and may not represent the full extent off limits to offenders. *Shelter doesn't accept sex offenders

Sources: City documents; New York State law; New York City Department of City Planning