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Nick Capone
Legislative Director
Office of Representative Filler

Re: House Bill 5679- SORA Legislation

To Whom It May Concern:

My name is David Herskovic, and I am a criminal appellate attorney in the metro Detroit area, with a decent percentage of my cases involving registry issues. In 2018, I along with Miriam Auckerman of the ACLU were the attorneys on *People v. Temelkoski*, in which the Michigan Supreme Court, in a very limited opinion, removed an individual with no criminal record whatsoever from the Sex Offender Registry. A big part of that decision was based from the Sixth Circuit Case of *Does v. Snyder*, a case I am sure everyone is familiar with. For those not familiar with the holding of that case, the main take away from that case was that the registry, especially for those who were placed onto it prior to 2006 and 2011, is that it was punishment. If the sole purpose of the current version of the bill for which we are here today is to try and work within the holding of that case, than you have failed.

As my friend Rep. Ryan Berman can attest, I am never one to shy away from "telling it like it is." That being the case, this bill in its current form is a lazy attempt to try and make this law constitutional, and frankly it is not worth the paper it is written on. It completely disregards the 1.5 years of work that individuals from the MSP, the ACLU and this legislature put forth to come up with a registry system that was not only fair for those forced to register, but also meets constitutional muster required by court orders.

The stated purpose of these laws is to protect the public, which is a valid reason. However, if the stated purpose abridges the due process rights of those who must register, it cannot and should not be deemed as meeting constitutional muster. The legislation as it currently stands serves no other purpose but to punish those on the registry. It treats them, not as human beings, but something less than that. These people have made mistakes, and in most cases, these people have owned up to their mistakes and tried to make a better life for themselves, something the registry does not take into account, and frankly makes very hard to achieve. A kitchen sink approach such as the registry in its current form has not worked and will not work.

If this legislature really wanted to tackle the problem, they would make a registry based on individual assessments of danger, made by trained professionals, as opposed to implementing a broad system sweeping everybody in, without a real determination of how dangerous they actually are.

There are several issues that I personally have with the registry in its current form, and even more issues that I have with the proposed amendments. First of all, the bill does not take into account those who have had their convictions set aside by a judge or statute, yet are still required to register. For instance, in *People v. Temelkoski*, we were able to remove our client from the registry because his conviction had been cleared as a result of completing HYTA, which at the time of his conviction stated that he would suffer no civil disabilities or consequences as a result of taking his plea. The court reasoned that placement onto SORA was a civil disability or consequence, and as such, it was a violation of his due process rights under both the state and federal constitutions. Not everyone is as lucky as Mr. Temelkoski. Take for instance another client of mine, who I will refer to as J.D. out of respect for his privacy. J.D. took a plea after he got caught up, during a bad time in his life, in a “to catch a predator” sting. He was sentenced to probation, which he completed without any problems, and when his probation was completed he petitioned the court in which he was sentenced to set aside his conviction. Seeing that he was a changed man from the time that he was sentenced, the Court agreed and set aside his conviction. Yet even though there is no conviction on his record, J.D. still must register as a sex offender. A court has deemed him not to be a danger to the community, yet the state of Michigan still does, in a very public way. J.D. is still limited in where he may live, where he might work and in his personal life choices as well. Moreover, because he is on a public registry, he is a “sitting duck” for unwanted harassment. For example, within the past year, J.D. called my office crying as he was receiving prank phone calls from individuals claiming to be the Detroit police, accusing him of sexual deviant acts and telling him he must turn himself in. Imagine yourself in his shoes and tell me how the current version of this bill would be fair to him.

I also think the bill needs to truly set forth a goal and abide by it. If the goal of SORA was to protect kids, than why are adult related cases included. A defendant could be convicted of inappropriate touching of an adult, and forced to register, and automatically, in most people’s minds, he or she is considered a pedophile because of appearing on the registry. Moreover, that same person could be subject to restrictions that prohibit them from dealings with their own kids, even though the crime for which they were convicted had nothing to do with kids at all.

Moreover, why are crimes that have no sexual element to them included on the registry? A prime example of this is the charge of “unlawful imprisonment of a minor”. Take for an instance a case where a father has a breakdown and wont let his wife or kids leave the home. He uses a gun to keep them from leaving. At no time is there anything of a sexual nature occurring involving the children or his wife. Yet, when the incident ends and the defendant is charged and ultimately convicted, he must now register as a sex offender. That makes about as much sense as standing in a crowded space within six feet of each other and not wearing a mask and expecting no one to have any issue with your actions.

When the registry was first started in 1995, it was a non-public registry, only accessible by the police. As the years have gone on, a majority of those who were forced to register are on a public registry. Public dissemination of this information has done less to keep the public safe and more to punish those whose information is being published. Historical data tells us that those who commit sexual offenses are not typically strangers, but people close to the complaining witnesses. Yet, any time there is an allegation involving a child, the first suspect is the people on the registry closest to where the allegation took place with no connection to the injured party. Now, add in the fact that those on the registry don't always have offenses dealing with kids, or even offenses that are sexual in nature. Not only are they stigmatized by being on the registry, but that stigmatization occurs over and over again every time they are forced to respond to matters they had no part of because of an overzealous neighbor or police department.

I will conclude by asking that this current version be thrown in the garbage and be re-written, so that it serves its intended purpose, while not trampling on the rights of those who must register. A good start would be to listen to all sides, rather than basing this bill on fear mongering and doing as little as possible to try and meet the bare bone requirements set out by US Court of Appeals and the US District Courts over the past few years. Only then will this legislation suit its intended goal and be constitutionally appropriate. Thank you for your time and attention to this important matter.

David Herskovic