

No. 97 MAP 2022

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,

Appellant,

v.

GEORGE J. TORSILIERI,

Appellee.

Appeal from the Order of the Court of Common Pleas of Chester
County entered on August 22, 2022 at No. CP-15-CR-1570-2016.

**BRIEF OF *AMICI CURIAE* ASSESSMENT AND TREATMENT
ALTERNATIVES AND JOSEPH J. PETERS INSTITUTE IN SUPPORT OF
GEORGE J. TORSILIERI AS APPELLEE**

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INTEREST OF THE AMICI CURIAE

Assessment and Treatment Alternatives (“ATA”) is a forensic mental health agency with specialties in the evaluation and treatment of both perpetrators and victims of sexual abuse and other interpersonal violence. ATA’s staff includes psychologists, psychiatrists, and therapists. ATA employs empirically validated treatment modalities to address both perpetration and trauma. ATA’s provision of treatment to individuals convicted of sexual offenses is carried out within the Containment Model.

The Joseph J. Peters Institute (“JJPI”) is a non-profit organization of medical professionals (psychiatrists, psychologists, social workers, counselors, and case managers) that have provided services across the continuum of abuse since 1955. JJPI offers outpatient and partial hospitalization level of care using evidence-based treatments for those suffering from the effects of sexual abuse, interpersonal violence, and other types of trauma. Additionally, JJPI provides evidence-based, trauma-informed treatments to individuals with a history of sexual misconduct, sexual offending, and/or perpetration of interpersonal violence. JJPI also engages in targeted education initiatives on sexual abuse in Philadelphia and surrounding Pennsylvania communities.

The *amici curiae* are affected directly by SORNA’s notification and registration requirements. They treat patients subjected to decades-long, and

potentially lifelong, government monitoring and community notification requirements. These rules make it more difficult for the *amici curiae* to reintegrate their current patients and undermine the *amici curiae*'s ability to protect the community from patient recidivism. The retroactive change in notification and registration requirements jeopardizes the mission of the *amici curiae* and the safety of the community.

The *amici curiae*'s experience treating victims, counseling released offenders, and educating the community is unique in Pennsylvania. They offer an experienced, on-the-ground perspective of the challenges facing victims and citizens formerly convicted of a sexual offense. Furthermore, their guiding goals promote three of the purposes of sexual-offender notification and registration laws: (1) protect the community from recidivism, (2) treat and protect former victims, and (3) monitor, rehabilitate, and reintegrate released offenders.¹

STATEMENT OF THE QUESTIONS INVOLVED

The *amici curiae* defer to the statement of the questions involved provided by the Appellee.

¹ The *amici curiae* filed a brief with this Court in connection with *Commonwealth v. Muniz*, 164 A.3d 1189 (Pa. 2017), and in this action during the prior appeal to this Court, *Commonwealth v. Torsilieri*, 232 A.3d 567 (Pa. 2020). The same concerns regarding SORNA outlined in those briefs persist with the statute in its current form.

STATEMENT OF THE SCOPE AND STANDARD OF REVIEW

The *amici curiae* defer to the statement of the scope and standard of review provided by the Appellee.

STATEMENT OF THE CASE

The *amici curiae* defer to the statement of the case provided by the Appellee.

SUMMARY OF ARGUMENT

The stated goal of Pennsylvania’s Sex Offender Registration and Notification Act (“SORNA”), 42 Pa. C.S. §§ 9799.10, *et seq.* (2018), is to “protect the safety and general welfare of the citizens of this Commonwealth by providing for increased regulation of sexual offenders.” 42 Pa. C.S. § 9799.11(b)(1); *see also id.* § 9799.11(a) (finding that the law’s registration and notification requirements will make the public safer). Rather than further that goal, however, the registration and notification requirements imposed by SORNA on persons previously convicted of committing a sexual offense undermine it in multiple ways.

First, the law overestimates the remarkably low risk of recidivism among persons subject to its notification and registration requirements. Second, the law increases the chance of recidivism and decreases the chances that such persons will rehabilitate and reintegrate successfully into their communities. Prolonged

community notification aggravates risk factors that make sexual-offense recidivism more, rather than less, likely. And requiring notification for decades, and possibly even life, is equivalent to the state proclaiming that persons convicted of sexual offenses cannot rehabilitate, marginalizing the work of treatment organizations that provide therapy at the order of the courts or as a condition of parole. Third, SORNA's offense-based risk classification system does not accurately classify recidivism risk. As a result, the police and the community are not properly warned about a person's recidivism risk, and consequently public safety is further undermined.

Research evidencing the harmful impacts of notification and registration requirements is compelling and conclusive. The amendments to SORNA enacted in 2018 after *Muniz* did little to address the discrepancy between the law's stated goal and the means by which it tries to achieve it. Together, SORNA's burdensome measures increase, rather than decrease, the risks to the community posed by persons who have committed a sexual offense.

ARGUMENT

I. SORNA's Notification and Registration Requirements Do Not Further the Law's Purpose of Preventing Ex-Offender Recidivism.

Although the requirements SORNA imposes are ostensibly based on the finding that "[s]exual offenders pose a high risk of committing additional sexual

offenses,” 42 Pa. C.S. § 9799.11(a)(4), the scientific evidence does not bear this out and, in fact, refutes it. Evidence shows that Pennsylvanians who committed a prior sexual offense are the least likely ex-offenders to recidivate in any way, let alone commit a new sexual offense.

The Commonwealth’s own data demonstrates this fact. The Pennsylvania Department of Corrections has found that persons who had previously committed a sexual crime pose a lower than average risk of any sort of recidivism when compared to those who had committed non-sexual offenses.² And very few recidivist offenses are sexual offenses—in fact, sexual offenses comprised only 3.1% of all Pennsylvania recidivist offenses in 2008.³ Both national and state

² The average rate of recidivism for all individuals released from incarceration in Pennsylvania is 59.9%. Pa. Dep’t of Corr., *Recidivism Report 2013*, 21, tbl. 12 (2013). The average for individuals who were convicted of a sexual offense is 53.2%. *Id.* For those that do recidivate, over 60% of reincarcerations are for technical parole violations, not stand-alone crimes. *Id.* at 24, tbl. 18; *see also* Jill S. Levenson, et al., *Grand Challenges: Social Justice and the Need for Evidence-based Sex Offender Registry Reform*, 43 J. OF SOC. & SOC. WELFARE, June 2016, at 3, 14 (stating that persons with prior sexual offense convictions “are less likely to be re-arrested for a new crime compared to other violent, property, and drug offenders”).

³ Broken down, the 3.1% is comprised of 0.6% forcible rapes, 0% statutory rape, and 2.5% other sexual offenses. *Recidivism Report 2013*, at 22, tbl. 14. Significantly, the Pennsylvania data demonstrates that “inmates who recidivated were not necessarily rearrested or reincarcerated for the same crime as the original commitment crime.” *Id.* at 20. In other words, not all of the recidivist sexual offenses were re-offenses.

studies additionally show that the risk of recidivating by the commission of another sexual offense within three years is extremely low.⁴

The likelihood of recidivating is low to begin with and decreases substantially over time. An individual who is among the few to recidivate is most likely to do so within the first few years after having committed the original offense.⁵ After those first few years, the risk of sexual offense recidivism considerably decreases for persons with prior offenses who remain in the community.⁶ Further, “[a]fter 10 years, moderate risk sex offenders reach

⁴ A United States Department of Justice study found that only 5.3% of individuals convicted of a sexual offense recidivated with a new sexual offense within three years. Bureau of Justice Statistics, *Recidivism of Sex Offenders Released from Prison in 1994*, 24 (2003). More recently, state-specific studies have found three-year sexual offense recidivism rates of 1.05% and 1.26%, respectively. Ind. Dep’t of Corr., *Recidivism Rates Decrease for 3rd Consecutive Year*, 1 (2009), <https://www.in.gov/idoc/files/RecidivismRelease.pdf>; Cal. Dep’t of Corr. & Rehab., *2017 Outcome Evaluation Report*, 39, 41 tbl. 16 (2018), <https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2022/04/Recidivism-Report-for-Offenders-Released-in-FY-2012-13.pdf>.

⁵ Kristen M. Zgoba, et al., *The Adam Walsh Act: An Examination of Sex Offender Risk Classification Systems*, SEXUAL ABUSE: A J. OF RES. & TREATMENT, Feb. 2015, at 1, 15; see also R. Karl Hanson, et al., *Reductions in Risk Based on Time Offense Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender*, PSYCHOL., PUB. POL’Y, & L., 6 (2017), available at <http://dx.doi.org/10.1037/law0000135>. In Pennsylvania, as explained above, the high-water mark of sexual offense recidivism is somewhere near 3.1% in the first three years. See *supra* note 3.

⁶ See, e.g., R. Karl Hanson, et al., *Reductions in Risk*, *supra* note 5.

recidivism rates comparable to general criminal offenders.”⁷ After 16.5 years without re-offense, even “high risk sex offenders are no more likely to be arrested for a new sexual crime than an offender with no prior sex crime history.”⁸

SORNA’s registration and notification requirements are irrational in light of this evidence. Under the law, those who commit the least serious offenses—the so-called “Tier 1” offenders—must register as a sex offender for at least *fifteen years*. See 42 Pa. C.S. § 9799.15(a)(1). Those committing more serious offenses (Tier 2 and 3 offenders) are subject to more substantial requirements, potentially including *lifetime* registration. See *id.* § 9799.15(a)(3), (5), (6). Yet as the research shows, persons with prior convictions are unlikely to recidivate and even

⁷ Levenson, *Grand Challenges*, *supra* note 2, at 18–19.

⁸ *Id.* at 19. Research also suggests that registries do not impact recidivism rates. For example, one South Carolina study concluded that that state’s registration requirements had *no effect* on decreasing recidivism. See Elizabeth J. Letourneau, et al., MED. UNIV. OF S.C., *Evaluating the Effectiveness of Sex Offender Registration and Notification Policies for Reducing Sexual Violence against Women* 4, 19 (2010), available at <https://www.ojp.gov/pdffiles1/nij/grants/231989.pdf>. And a longitudinal research on re-offense rates found that there was no difference in trends between individuals with prior offenses in the United States and Canada, where no public registry exists. See, e.g., Hanson, et al., *Reductions in Risk*, *supra* note 5, at 4; R. Karl Hanson, et al., *High-Risk Sex Offenders May Not Be High Risk Forever*, J. INTERPERSONAL VIOLENCE 6–7 (2014), available at <http://jiv.sagepub.com/content/early/2014/03/20/0886260514526062>.

less so after just a few years have passed from the commission of the original offense.⁹

SORNA's stated finding that persons who have previously offended are especially likely to re-offend cannot be reconciled with widely accepted research. The law's onerous registration requirements needlessly burden individuals who are among the least likely to commit a new sexual offense.

II. Lengthy Notification and Registration Increase the Risk of Sexual Offense Recidivism.

SORNA's registration and notification requirements in fact work against their stated purpose: they *increase* the risk of sexual offense recidivism. Consequently, the law aggravates the risk to communities it ostensibly aims to protect.

This Court has recognized that lifetime notification, at least for juveniles, “leads to . . . in some cases, an increased risk of other criminal acts.” *In the Interest of J.B.*, 107 A.3d 1, 10 (Pa. 2014). SORNA's conditions separate young persons from support and care, encourage isolation, and directly interfere with patient rehabilitation. Scientific studies demonstrate that registration and notification—which entail harmful and isolating collateral consequences—can increase the likelihood of recidivism in adults as well, by putting them at risk for

⁹ See Hanson, et al., *Reductions in Risk*, *supra* note 5, at 6.

unemployment, homelessness, physical and verbal harassment, and property damage.¹⁰ Oftentimes, treatment centers see patients denied housing by landlords on the basis of their sex offender status.¹¹ Even government programs meant to aid returning citizens in securing employment routinely exclude sexual offenders from their services.¹²

ATA and JJPI patients anecdotally confirm that the factors that increase the risk of recidivism plague Pennsylvania registrants.¹³ Employment is scarce because employers discriminate against those on the registry. One patient was turned down by *twelve* different employers solely because of his registration status. Another patient reported being turned down by *hundreds* of employers, despite having a Master's Degree. Even those able to find work may be underemployed,

¹⁰ *Id.* at 11.

¹¹ *See id.* at 13 (“[H]ousing instability is consistently associated with criminal recidivism and absconding.”).

¹² For example, a recent report from the Philadelphia Reentry Coalition found that “[p]eople with sex offense arrests and/or convictions face the most eligibility barriers” for reentry programs. THE PHILADELPHIA REENTRY COAL., *Philadelphia’s Reentry Services Landscape*, 25 (Aug. 2019), available at <https://www.phila.gov/media/20190819093622/Philadelphias-Reentry-Services-Landscape-Full-Report-August-2019.pdf>.

¹³ To bolster their arguments, *amici curiae* invited former and current patients who were previously convicted of a sexual offense and who are subject to SORNA’s requirements to share the ways in which those requirements have impacted their journeys toward rehabilitation. Out of concern for privacy, and consistent with requests from several patients, the names of those patients are omitted from this Brief.

and report living with the constant fear that their coworkers will find out about their registration status and that they will be fired. In fact, one patient was fired after a coworker learned of his registration status and threatened his life. Another patient was removed from all public-facing work after his coworkers discovered his registration status. Still another patient kept his job, but suffered verbal threats and harassment from coworkers once they learned of his registration status.

Assuming a registrant can afford it, housing is difficult to find. Many registrants reported that they were denied housing because of their status. One patient was rendered homeless when he was denied housing based on his registration status, and then was rearrested for failure to update his registration with his new—non-existent—address. Homelessness is not an isolated experience among registrants: one patient found housing only because his parole officer was able to recommend a landlord, and another and his family were homeless for two days before a landlord “accepted who [he] was” and offered him housing. If registrants are able to find housing, it can be more expensive or barely habitable. One female registrant was forced to pay double the deposit for a rental for her and her daughter because of her status. Another registrant was forced to live in a room “infested with bedbugs” and suffered a broken leg because part of his apartment collapsed in on him.

Those that do find housing are subject to physical and verbal harassment from their neighbors. Many patients report living in “constant fear,” with one patient moving three times because he felt unsafe after others found his home address. One patient was approached by three men and told “to get the f[] out of th[e] neighborhood” just a week after moving in, and another patient was approached by a few men “with guns out saying [he] couldn’t live” in the neighborhood. Another patient has received death threats and had his vehicle vandalized. And another was told that “if a dog can be put down” so can a sex offender. One patient describes the registration requirement as “extremely stressful” because his home address is available to the individuals that murdered his son.

SORNA’s effects are not limited to registrants but affect their families as well. Many patients worry about the shame they bring to their families, loved ones, and friends. A patient who lives with his parents worries about the shame his parents feel because their house is listed on the registry. Another patient worries about the burden his registration has on his wife and wonders “how long she’s go[ing] to put up with [it].” And another patient feels his 11-year-old son will “never have” a “bright future” because of the patient’s registration status while another believes his “children[’s] life is definitely different” because of his registration status.

Patients not only worry about providing for their families and possibly harming their families' mental health, but also fear for their families' safety. A patient believes his registration status "will embarrass and cause anyone close to [him] to be treated badly." Another patient's family has been harassed: "[s]everal [of his] family members have received emails from online reputation scammers" harassing them about his registration status. The same patient has personally received threats from others directed at his family.

SORNA works serious psychological tolls as well, including "shame, stigma, isolation, anxiety, depression, and hopelessness."¹⁴ These experiences are dynamic risk factors that increase the risk of sexual offense recidivism.¹⁵ Anecdotally, patients agree: shame and stigma are nearly synonymous with

¹⁴ Levenson, *Grand Challenges*, *supra* note 2, at 13. Feelings of shame and social isolation in turn lead to an increased risk of recidivism. See Danielle J.S. Bailey, et al., *Ashamed and Alone: Comparing Offender and Family Member Experiences With the Sex Offender Registry*, 43 CRIM. JUST. REV. 4 (2018).

¹⁵ See, e.g., R. Karl Hanson & Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (2004), available at <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/2004-02-prdctrs-sxl-rcdvsm-pdtd/2004-02-prdctrs-sxl-rcdvsm-pdtd-eng.pdf>; Joan Tabachnick & Alisa Klein, *A Reasoned Approach: Reshaping Sex Offender Policy to Prevent Child Sexual Abuse*, ASS'N FOR THE TREATMENT OF SEXUAL ABUSERS, 7 (2011), available at <https://www.atsa.com/pdfs/ppReasonedApproach.pdf>. Cf. Candace Kruttschnitt, et al., *Predictions of Desistance Among Sex Offenders: The Interactions of Formal and Informal Social Controls*, 17 JUST. Q., No. 1, 78–80 (2000) (finding that stable employment and treatment significantly reduces the risk of recidivism).

registration. One patient described that “registration mentally feels like a brand burned into [their] forehead for life” and another views himself as “a leper in the world.” According to another patient, SORNA “just haunts you.” And still another patient felt he was constantly “looking over [his] shoulder” because of his registration status.

Unsurprisingly, depression and anxiety also follow registration. Patients reported suicidal ideation stemming from the “shame, guilt, and disgust” of registration. One patient sat in his bathroom with a knife in his hand “crying because [registration] was ruining [his] life and . . . caused [him] so much misery.” Another patient stated he “wake[s] up every night in a cold sweat thinking about what can and will happen to [him] next” and another wakes up “each morning at 4:30 [AM]” and cannot begin his day without “dry-heaving and vomiting.”

Because of the shame and stigma, patients also report intense isolation. One patient is “nervous around new people” while another became “isolatory [sic] and on the verge of paranoid” about what others might do to him because of his registration status. Many other patients no longer feel safe leaving the house, suffering crippling anxiety and fear. Making new friends is nearly impossible. As one patient explains: “I can’t even let the person get to know who I am now before they know how I was in the past.” And some patients even feel unsafe (or are legally not permitted to) attending church.

That isolation is not only from society, but from a patient’s own family—a key support network. One patient believes registration “has forced [him] to stay away from [his] own family members just because someone has a kid” while another does not “like to be around family sometimes because [he] think[s] some female family members may feel uncomfortable” because of his registration. Another patient said his “wife and grown children were so shamed and ridiculed” because of his registration and the community’s reaction to it “that they ceased all contact.” And another patient could not wait in the hospital while his daughter’s mother underwent surgery because the hospital learned of his registration status. For him, “[t]he feelings of hopelessness had never been so strong” as when he was directed by hospital staff to wait outside.

A steady job, livable home, and social support—which often are denied to persons with prior sexual offenses in part due to the notoriety associated with registration—all decrease the risk of sexual offense recidivism.¹⁶ By limiting access to these important conditions, registration and notification may lead to the opposite, unintended outcome: increased recidivism rates.

¹⁶ See, e.g., Jill Levenson & Leo Cotter, *The Effects of Megan’s Law on Sex Offender Reintegration*, 21 J. OF CONTEMPORARY CRIM. JUST., No. 3, 298–300 (2005).

III. Lengthy Notification and Registration Inhibit Successful Reintegration and Rehabilitation.

Extensive notification and registration requirements also increase the burden on, and decrease the likely effectiveness of, treatment for individuals who have committed a sexual offense. Permanent public shaming through decades-long notification may drive patients underground, away from treatment, employment, and a chance at rehabilitation and reintegration.¹⁷ In the face of homelessness, harassment, depression, and joblessness, patients of the *amici* must overcome these stressors. When persons seeking treatment have difficulty meeting their basic needs, that treatment is less effective. Treatment stops altogether if a patient recidivates—even if their crime is only a technical violation, like a failure to register. The cycling between jail and the community puts more stress on treatment centers, which must re-evaluate individuals each time they are re-released from prison and cannot simply begin the treatment where they had left off.

Many ATA and JJPI patients find it harder to rehabilitate and improve themselves in light of the obstacles created by registration. One patient finds the logistics of taking public transportation to his appointments extremely difficult because he has “to avoid the possibility of accidentally interacting with a minor.” A second patient was evicted from his apartment because of his registration status.

¹⁷ Kruttschnitt, *supra* note 15, at 67–87.

The distressing experience displaced his treatment as the focus of his group therapy.

Psychologically, registration makes rehabilitation and treatment more difficult. One patient felt that registration “takes a brutal toll on you[], every day” while another described it as “a mental life sentence without the possibility of parole” and felt that it “keeps you constantly stuck in a moment in life, never able to move out of it or move forward, even after you have done decades of work on the issues.” Another patient said he was “only trying to give [his] rehabilitation a chance to work” but felt stymied by “all th[e] scrutiny.” Yet another patient felt that “[t]aking a marginalized group of people who have put in the work to overcome their (usually singular) offense and further marginalizing them is counterproductive to the well-intentioned implementation” of SORNA.

Most patients treated by *amici* accept their punishment, exhibit genuine remorse, and desire to rehabilitate, reintegrate into society, and better themselves. As one patient stated, an individual that commits a crime “deserve[s] [] adequate punish[ment,] but as they receive that punishment, they should obtain the right of redemption and rehabilitation.” As another patient questions: “how can anyone move forward when they a[re] made to feel like they are not a part of anything nor a part of society?”

Registration, however, can thwart patients and treatment providers in their attempts at rehabilitation. Because of SORNA's registration and notification requirements, ATA and JJPI cannot focus solely on rehabilitating their patients and providing treatment to address their underlying emotional, behavioral, or psychological issues. Instead, ATA and JJPI must first assist their patients in meeting basic life needs like housing and employment while addressing the social stigma, isolation, depression, and anxiety that accompany registration. Despite these efforts, *amici's* rehabilitative goals often are stymied, as the harmful consequences of registration and notification exacerbate conditions making recidivating likely. By inhibiting patient treatment and constraining the individuals on the front lines of preventing recidivist behavior, SORNA's registration and notification requirements places the community at greater risk.

IV. Imposing Requirements Based on Offense Type Is Ineffective at Assessing Recidivism Risk and Dilutes the Power of the Registry.

SORNA assigns recidivism risk based on offense type instead of an individual offender's characteristics. *See* 42 Pa. C.S. §§ 9799.14, 9799.15. Although SORNA's amendments potentially lessened some registration and notification requirements, *see, e.g., id.* § 9799.15(a.2) (allowing lifetime registrants to petition a court for removal of registration requirements after twenty-five years of full compliance), SORNA's still-prolonged registration terms for individuals

based on offense-type needlessly strain public resources, misinform the public, and dilute the effectiveness of the registry. SORNA's classification of persons broadly based on the type of offense rather than individual characteristics fails to provide an accurate tool for assessing an individual's recidivism risk and misclassifies those individuals for notification purposes.

SORNA requires persons convicted of a sexual offense to register for a fifteen-year term, a twenty-five-year term, or their entire lifetime, based solely and rigidly on the type of offense they committed. *See* 42 Pa. C.S. § 9799.15. This one-size-fits-all approach to offender classification is not nearly as effective as individualized, judicially determined risk profiles.¹⁸ Close empirical study has found that SORNA's "tiers overestimate risk in most cases and erroneously imply that the majority of [ex-offenders] pose a high threat to community safety."¹⁹

For the police, offense-based classification systems require them to monitor individuals who are at low risk of reoffending but who are misclassified as high-risk, diverting law enforcement resources from monitoring those who are more

¹⁸ Naomi J. Freeman & Jeffrey C. Sadler, *The Adam Walsh Act: A False Sense of Security or an Effective Public Policy?*, 21 CRIM. JUST. POL'Y REV. 1 (2009). *See also* Levenson, *Grand Challenges*, *supra* note 2, at 18–20 (discussing the Static-99-R, a "validated actuarial risk assessment tool[] . . . that demonstrate[s] predictive ability to screen offenders into relative risk categories").

¹⁹ *See* Zgoba, *supra* note 5, at 14–15 ("Tier 3 offenders did not have significantly higher rates of recidivism than Tier 2 offenders.").

likely to recidivate.²⁰ As of 2021, there were 22,095 people on Pennsylvania’s sex offender registry who are under decades-long monitoring requirements.²¹ The staggering number of individuals subject to SORNA ensures less effective monitoring. State and local police forces must monitor more individuals, spreading out already thin resources, and must do so potentially for the rest of those individuals’ lives.²²

Overlong notification may also confuse the public for the same reasons it can hinder law enforcement: misclassification. Extended notification requirements communicate a skewed picture of the source of sexual offense risk stems. Most sexual offenses are committed by persons who have never previously offended and who are known to their victims—not strangers living nearby. The U.S. Department of Justice has found that 87% of sexual crimes are committed by those

²⁰ *See id.* at 2 (“[I]mposing higher levels of treatment and supervision than is necessary based on offender risk is not cost-effective and can create collateral consequences to offenders and communities that potentially compromises public safety.”).

²¹ This number includes 11,857 persons who potentially are subject to lifetime monitoring, of which 2,451 have been adjudicated sexually violent predators. Pa. State Police Megan’s Law Section, *2021 Annual Report*, available at <https://www.meganslaw.psp.pa.gov/Documents/2021%20Megans%20Law%20Annual%20Report.pdf>.

²² *See Levenson, Grand Challenges*, *supra* note 2, at 16 (“With individuals placed on registries for mandatory durations of 25 years to life, little attrition occurs, and fiscal burdens for states will continue to escalate.”).

who have not previously offended.²³ Another Department of Justice study found that almost all sexually abused children are victimized by someone familiar to them, not a stranger.²⁴ Finally, a study based in Baltimore, Maryland found there was *less* risk of sexual offense victimization in neighborhoods that have higher concentrations of citizens on sexual offense registries.²⁵

In short, community notification does not accurately warn community members of the risk that they will fall victim to a sexual offense and, in fact, obfuscates the real source of risk. Aside from misinforming the public in general, such obfuscation also may lead to exacerbated feelings of anxiety and experiences of trauma in victims.

Ohio serves as an important example of how extensive, possibly lifetime notification dangerously dilutes the registry. In striking down a law that would have ballooned Ohio's sexual offense registry, Ohio's Supreme Court explained that, "if we were to adjudicate all sexual offenders as sexual predators, we run the

²³ Bureau of Justice Statistics, *Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault* (1997).

²⁴ See Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported by Law Enforcement: Victim, Incident, and Offender Characteristics*, 10 (2000) (finding that only 7% of sexually abused children are victimized by strangers).

²⁵ Amanda Y. Agan & J.J. Prescott, *Sex Offender Law and the Geography of Victimization*, 11 J. EMPIRICAL LEGAL STUDIES 786, 786 (2014). See also *supra*, note 8 (registration and notification requirements are not the cause of

risk of ‘being flooded with a number of persons who may or may not deserve to be classified as high-risk individuals, with the consequence of diluting both the purpose behind and the credibility of the law.’” *State v. Eppinger*, 743 N.E.2d 881, 888 (Ohio 2001) (quoting *State v. Thompson*, 748 N.E.2d 1144, 1151 (Ohio Ct. App. 1999)).²⁶

Amici’s experiences with their patients confirms that an offense-based classification system does not serve a rehabilitative or retributive purpose, and heightens feelings of inequity. It also fails to accurately assess the risk an individual faces of recidivating or harming their community members. Thus, resources may be wasted monitoring and directing enforcement efforts at ex-offenders who are unlikely to commit future offenses, while allowing higher risk individuals to escape warranted attention.

reduced recidivism rates among persons who previously committed a sexual offense).

²⁶ Even after the court’s warning, the change in Ohio’s classification system led to a flood of so-called high-risk ex-offenders. Of the total population of individuals previously convicted of a sexual offense, after 20 years, only between 24–27% may recidivate. In Ohio, double this number, 56%, were placed in Tier 3. This tier is supposed to delineate those individuals with the highest risk for re-offense. Andrew J. Harris, et al., *Widening the Net: The Effects of Transitioning to the Adam Walsh Act’s Federally-Mandated Sex Offender Classification System*, 37 CRIM. JUST. & BEHAV., May 2010, at 503, 514–16. Classification will not match risk in Pennsylvania either. Currently, 54% of registrants have been classified as having the greatest risk of re-offense and subject to the most onerous registration requirements. *See* Pa. State Police, *supra* note 21.


Pennsylvania's SORNA already has added over 22,000 individuals to the registry for extended periods of registration and notification. With so many people on the registry, it is a monumental task for the police to determine a registrant's true recidivism risk, and an impossible one for the public.²⁷ SORNA's requirements, as a result, make the registry less useful in the short- and long-term, undermining *amici*'s and SORNA's shared goal of protecting the community.²⁸

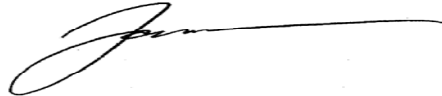
²⁷ See Levenson, *Grand Challenges*, *supra* note 2, at 17 (declaring that "the ability of the public to differentiate high risk offenders is diluted" by SORNA's lifetime registration and offense-based classification system).

²⁸ Notably, Michigan's Attorney General filed briefs of *amicus curiae* in two cases then pending before her state's supreme court, *Michigan v. Betts*, No. 148981, and *Michigan v. Snyder*, No. 153696, arguing that Michigan's sex offender registration law, which is similar to Pennsylvania's, "has swelled without any focus on individualized assessment of risk to the community, which makes it increasingly difficult for law enforcement officers to know which offenders to focus on" and "makes it difficult for offenders to rehabilitate and reintegrate into the community." See MICHIGAN.GOV, *Attorney General Nessel Weighs in On Sex Offender Registration Cases before MI Supreme Court*, Feb. 8, 2019, <https://www.michigan.gov/ag/news/press-releases/2019/02/08/attorney-general-nessel-weighs-in-on-sex-offender-registration-cases-before-mi-supreme-court>. The law, the Attorney General contends, "imposes burdens that are so punitive in their effect that they negate the State's public safety justification." *Id.*

CONCLUSION

The government's and *amici curiae*'s interests are aligned: foster safe communities, help victims recover, and rehabilitate and reintegrate citizens who have served out their sentences for committing a criminal offense. As *amici curiae* uniquely engage a cross-section of victims, former offenders, government officials, and members of the public, they are well suited to observe and study whether SORNA's requirements and impacts further those shared interests. Experience and studies strongly indicate that they do not. Imposing lengthy and burdensome registration and notification requirements on individuals will lead to increased recidivism. It will strain already-limited public and private resources. It will misinform the public and dilute the power of a small, focused registry of those with the greatest risk of recidivating. It will jeopardize the efforts of treatment centers. And, ultimately, it likely will endanger the community. SORNA undermines the goal that ostensibly motivated its enactment, inhibits the ability of *amici curiae* to fulfill their roles as treatment providers, and increases the risk of harm to offenders, victims, law enforcement, and the public at large.

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Dated: March 1, 2023

CERTIFICATE OF COMPLIANCE

I, Michael R. McDonald, hereby certify on this 1st day of March, 2023, pursuant to Pennsylvania Rule of Appellate Procedure 531(b)(2), that no person other than the *amici curiae*, their members, or counsel were paid—in whole or in part—for the preparation of the *amici curiae* brief. I further certify that no person other than the *amici curiae*, their members, or counsel authored—in whole or in part—the *amici curiae* brief.



Michael R. McDonald

WORD COUNT CERTIFICATION

Pursuant to Pa. R.A.P. 2135, the text of this brief of amici curiae consists of 5279 words as counted by the Microsoft Word word-processing program used to generate this petition.

CERTIFICATE OF COMPLIANCE

I, Michael R. McDonald, hereby certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF SERVICE

I, Michael R. McDonald, hereby certify that on this 23rd day of February, 2023, I caused a true and correct copy of the foregoing Brief of Amici Curiae to be served by electronic filing.

/s/ Michael R. McDonald
Michael R. McDonald