Nos. 25-1413 / 25-1414
IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MARY DOE; JOHN DOE A; JOHN DOE B; JOHN DOE C; JOHN DOE D; JOHN DOE E; JOHN DOE G; JOHN DOE H; MARY ROE,
Plaintiffs - Appellants Cross-Appellees,

v.

GRETCHEN WHITMER, Governor of the State of Michigan; JAMES GRADY, II, Colonel,
Defendants - Appellees Cross-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
Case No. 2:22-cv-10209 (Hon. Mark A. Goldsmith)

AMICUS CURIAE BRIEF IN SUPPORT OF PLANTIFFS-APPELLANTS

On behalf of:

- Safe and Just Michigan
- The Peter L. Zimroth Center on the Administration of Criminal Law at NYU School of Law
- The Law Enforcement Action Partnership

MELISSA M. SALINAS (MI-P69388)
Counsel of Record and Cooperating Counsel for Amici Curiae
University of Michigan Law School
Jeffries Hall, Room 2058, 701 South State Street
Ann Arbor, MI 48109-1215
734-764-2724
salinasm@umich.edu

INTRODUCTION

Undersigned counsel respectfully tenders this brief in support of the Plaintiffs-Appellants, and on behalf of the following organizations who support the fair administration of criminal justice: Safe and Just Michigan, the Peter L. Zimroth Center on the Administration of Criminal Law at NYU School of Law, and the Law Enforcement Action Partnership.

STATEMENT OF COMPLIANCE WITH FRAP 29(a)

FRAP 29(a) governs the filing and content of an amicus brief before this Court, and requires, among other things, that such a brief be filed only by leave of Court or if all parties have consented to it filing. FRAP 29(a)(2). Undersigned Counsel for Amici Curiae has consulted with counsel for all parties, and they have graciously consented to the filing of this amicus brief.

FRAP 29(a)(4) requires that an amicus brief must contain a disclosure statement "like that required of the parties by Rule 26.1[.]" Pursuant to FRAP 29(a)(4) and consistent with the requirements of FRAP 26.1, makes the following disclosure:

1. Are Amicus Curiae subsidiaries or affiliates of a publicly owned corporation? Answer: No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? Answer: No.

TABLE OF CONTENTS

INTRODUCTION……..i

STATEMENT OF COMPLIANCE WITH FRAP 29(a)……i

TABLE OF CONTENTS……..ii

TABLE OF AUTHORITIES……iii

AMICI AND THEIR INTEREST…….vi

QUESTION PRESENTED……1

SUMMARY OF ARGUMENT……..1

ARGUMENT…….2

I. SORA'S AUTOMATICALLY IMPOSED REQUIREMENTS CONFLICT WITH THE BASIC TENETS OF MICHIGAN'S CRIMINAL JUSTICE SYSTEM……2

A. Michigan's criminal justice system incorporates four critical tenets…….5

1. The exercise of official discretion based on individualized assessments……...5

2. The existence of safeguards to promote accuracy and fairness in decision-making,……...6

3. Indeterminate sentencing to promote the goal of rehabilitation…….10

4. Research-based practices to maximize public safety……..13

B. SORA is an outlier that conflicts with these fundamental tenets…….14

CONCLUSION……..….20

CERTIFICATE OF COMPLIANCE AND SERVICE……21

TABLE OF AUTHORITIES

Cases

People v Cook, 147 Mich. 127 (1907)……11

People v Lockridge, 498 Mich. 358 (2015)……4,6

People v Powe, 469 Mich. 1032 (2004)……..11

People v Tanner, 387 Mich. 683 (1972)……..11

People v Taylor et al, No. 166428, ___Mich.___, 2025 WL 1085247 (Mich. April 10, 2025)……...4

Constitutions

Mich. Const 1850, art. 4, sec. 47……10

Mich. Const 1963, art. IV, sec. 45……11

Statutes

M.C.L. § 28.728c……14

M.C.L. § 28.729……..……17

M.C.L. § 771.3(11)……..12

M.C.L. § 771.4a……...10

M.C.L. § 771.4b……...12

M.C.L. § 791.233e……9

M.C.L. § 791.240a……...10

M.C.L. § 791.251(2)……..7

Mich. Public Act 273 of 2024……4

Mich. Public Act 274 of 2024……4

Michigan Court Rules

Mich. Court R. 6.445……9

Michigan Administrative Code

Mich. Admin. Code R. 791.7715……..9

Michigan Department of Corrections Policy Directives

Mich. Dept. of Corr. P.D. 03.03.105……..8

Mich. Dept. of Corr. P.D. 05.01.135(F)……8

Mich. Dept. of Corr. P.D. 06.04.130……12

Mich. Dept. of Corr. P.D. 06.06.100……12

Federal Rules

FRAP 29(a)……...i, 21

FRAP 26……i

FRAP 32……..21

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Levine, A. Mahar, & J. Smith, *Do Michigan's Sentencing Guidelines Meet the Legislature's Goals? A Historical & Empirical Analysis of Prison Terms for Life-Maximum Offenses*, Safe & Just Michigan (November 2021), 11-19, available at https://safeandjustmi.org/wpcontent/ uploads/2021/12/Do_Michigans_ Sentencing_Guidelines_Meet_The_ Legislatures_Goals.pdf……...2

Ghandnoosh and K. Budd, *Incarceration and Crime: A Weak Relationship*, Sentencing Project, June 13, 2024, available at https://www.sentencingproject.org/ reports/incarceration-and-crime-a-weak-relationship/……..2

Michigan Department of Corrections, *Michigan's Success Rate* (last updated July 3, 2025), available at https://www.michigan.gov/corrections/success-rate……3

Witwer, A.R., *Discretion and Disagreement: A Longitudinal Study of Departures Under Presumptive and Advisory Sentencing Guidelines*, Crime & Delinquency (2023), available at journals.sagepub.com/doi/full/10.1177/ 00111287231218701?mi =ehikzz……....4

E. Latessa and C. Lowenkamp, *What Works in Reducing Recidivism?,* 3 University of St. Thomas L. J 521-535 (2006), available at https://www.uc.edu/content/dam/uc/ccjr/docs/articles/What_Works_STLJ.pdf……13

B. Levine, *Denying parole at first eligibility: How much public safety does it actually buy?*, Citizens Alliance on Prisons and Public Spending (August 2009), available at https://www.prisonpolicy.org/scans/cappsmi/denying_parole_ at_first_eligibility_2009.pdf……15

Letourneau, E. J., Levenson, J. S., Bandyopadhyay, D., Armstrong, K., S., & Sinha, D., (2010), *The Effects of Sex Offender Registration and Notification on Judicial Decisions*, Criminal Justice Review, 35, 295-317, available at https://journals.sagepub.com/doi/10.1177/0734016809360330……...16

Heather R. Hlavka & Christopher Uggen, *Does Stigmatizing Sex Offenders Drive Down Reporting Rates? Perverse Effects and Unintended Consequences*, 35 N. Kentucky L. Rev. 347, 368 (2008), available at http://users.soc.umn.edu/~uggen/Hlavka_Uggen_NKLR_08.pdf……..16

AMICI AND THEIR INTEREST[1]

Safe & Just Michigan (SJM) (formerly the Citizens Alliance on Prisons and Public Spending) is a nonprofit, nonpartisan policy and advocacy organization that works to reduce the social and economic costs of mass incarceration. Because policy choices, not crime rates, determine corrections spending, SJM seeks to re-examine state policies to shift resources to services proven to prevent crime, reduce recidivism, support victims, and improve the quality of life for all Michigan residents. SJM advocates for evidence-based strategies to protect the public, to reduce the prison population, and to use state resources cost-effectively at all levels of the criminal justice system.

The Peter L. Zimroth Center on the Administration of Criminal Law at NYU School of Law (the "Zimroth Center")[2] is dedicated to defining and promoting good government practices in the criminal justice system through academic research, litigation, and public policy advocacy. The Center regularly participates as *amicus curiae* in cases raising substantial legal issues regarding interpretation of the Constitution, statutes, regulations, or policies. The Center supports challenges to

[1] No party or counsel for any party authored any part of this brief or made a monetary contribution intended to fund the preparation or submission of this brief. The parties have consented to the filing of this brief.

[2] The Zimroth Center is affiliated with New York University, but no part of this brief purports to represent the views of New York University School of Law or New York University.

practices that raise fundamental questions of defendants' rights or that the Center believes constitute a misuse of government resources. The Center also defends criminal justice practices where discretionary decisions align with applicable law and standard practices and are consistent with law-enforcement priorities.

The Law Enforcement Action Partnership (LEAP) is a nonprofit organization whose members include police, prosecutors, judges, corrections officials, and other law enforcement officials advocating for criminal justice and drug policy reforms that will make our communities safer and more just. Founded by five police officers in 2002 with a sole focus on drug policy, today LEAP's speakers' bureau numbers more than 200 criminal justice professionals advising on police community relations, incarceration, harm reduction, drug policy, and global issues. Through speaking engagements, media appearances, testimony, and support of allied efforts, LEAP reaches audiences across a wide spectrum of affiliations and beliefs, calling for more practical and ethical policies from a public safety perspective.

QUESTION PRESENTED

Do the automatically imposed requirements in Michigan's Sex Offenders Registration Act (SORA) conflict with the basic tenets of Michigan's criminal justice system?

Amici say: Yes

SUMMARY OF ARGUMENT

Michigan's criminal justice system is based on four critical tenets: the exercise of informed discretion by officials, the existence of safeguards to promote accuracy and fairness in decision-making, trust in indeterminate sentencing as a means to rehabilitation, and reliance on evidence-based practices that promote public safety. Michigan's Sex Offenders Registration Act (SORA) of 2021, like its predecessor, is fundamentally inconsistent with these bedrock principles., SORA's automatically imposed requirements, which have no connection to risk, no provision for input from criminal justice officials who know the individual registrant, and no off ramp, undermine the ability of registrants to reenter the community safely. In a criminal legal system that generally strives to protect public safety through rational decision-making and support for offender success, SORA is an outlier. Continued adherence to a system of pervasive oversight that does more harm than good is not rational.

ARGUMENT

I. SORA's automatically imposed requirements conflict with the basic tenets of Michigan's criminal justice system.

Attitudes about criminal justice change over the decades as crime rates fluctuate, the collateral consequences of policy choices are revealed, and research supports the development of new strategies for reducing crime. The late 1980s through the early 2000s was a period of "getting tough." Sentences got longer, the use of habitual offender statutes increased, parole grant rates declined, and parole revocations increased. Sentencing guidelines were implemented and lengthened sentences for serious assaultive offenses, particularly sex offenses. B. Levine, A. Mahar, & J. Smith, *Do Michigan's Sentencing Guidelines Meet the Legislature's Goals? A Historical & Empirical Analysis of Prison Terms for Life-Maximum Offenses*, Safe & Just Michigan (November 2021), 11-19, available at https://safeandjustmi.org/wp-content/uploads/2021/12/Do_Michigans_Sentencing_Guidelines_Meet_The_Legislatures_Goals.pdf.

The results included not only the hardship of extended incarceration for prisoners and their families but an enormous expansion of the prison system at great cost to taxpayers. Research shows that these steps made only a modest contribution to the decline in crime rates that began in the 1990s. Ghandnoosh and K. Budd, *Incarceration and Crime: A Weak Relationship*, Sentencing Project, June 13, 2024, available at https://www.sentencingproject.org/reports/incarceration-and-crime-a-

weak-relationship/. It was in this context that the Michigan Legislature first enacted SORA.

In recent years, criminal justice policies have evolved substantially. The focus now extends beyond harsh punishment to community-based sanctions, treatment for substance abuse and mental illness, and re-entry support for people returning home from prison. The shift has proven successful. Parole grant rates are up, parole revocations are down, and the prisoner population has decreased by nearly 19,000 since reaching its peak of roughly 51,500 in 2007. The Michigan Department of Corrections (MDOC) notes the recidivism rate for parolees has declined to an all-time low of 21 percent. It attributes this success to significant strides in delivering vocational and academic programs, providing prerelease support for paroling prisoners, and connecting parolees to community-based resources. Michigan Department of Corrections, *Michigan's Success Rate* (last updated July 3, 2025), available at https://www.michigan.gov/corrections/success-rate.

The MDOC jettisoned its policy of requiring treatment participation for assaultive and sexual offenders based solely on the fact of conviction and now bases the nature and extent of required treatment on validated risk assessment tools. People entering prison with sex offense convictions are assessed using the Static-99R. Only those who score at risk Levels IV(a) or IV(b) are assigned to mandatory sexual offense programming. Pls' Statement of Material Facts, R.123-1, PageID #3772.

This is because, as Plaintiffs' expert observed: "Research has consistently shown that lower risk offenders tend to recidivate at higher rates when interventions are over-delivered." Stapleton Report, R 123-20, PageID #4689. That is, public safety is *reduced* when treatment and supervision are not apportioned according to actual risk.

Changes in sentencing have occurred as well. In *People v Lockridge*, 498 Mich. 358, 365 (2015), the Michigan Supreme Court changed the sentencing guidelines from mandatory to advisory, which resulted in more downward departures for serious offenses, even for sex offenses, albeit to a lesser extent than for other crimes Witwer, A.R., *Discretion and Disagreement: A Longitudinal Study of Departures Under Presumptive and Advisory Sentencing Guidelines*, Crime & Delinquency (2023), available at journals.sagepub.com/doi/full/10.1177/00111287231218701?mi%20=ehikzz. In a series of decisions, Michigan courts have prohibited the harshest sentences for minors and young adults. *See People v Taylor et al,* No. 166428*,* ___Mich___, 2025 WL 1085247 (Mich. April 10, 2025). Most recently, the Legislature created a new sentencing commission charged with reassessing the sentencing guidelines and recommending modifications in Michigan Public Acts 273 and 274 of 2024.

A. Michigan's criminal justice system incorporates four critical tenets.

1. The exercise of official discretion based on individualized assessments

Michigan's criminal justice system is built on the exercise of official discretion within the confines of the law. At every stage, from the police officer's arrest decision to the parole agent's enforcement of supervision conditions, professionals collect relevant information, then make individualized decisions about how the law should be applied to the circumstances of the case before them. A common thread in all these decisions is the assessment of risk. Each official's first question is what the impact on public safety is likely to be. Whether officials use formal risk assessment instruments or make informal judgments based on the circumstances of the offense, the defendant's prior record, and their own experience, their goal is always to identify the best way to minimize harm to the public.

When it comes to determining the punishment appropriate for individual defendants and the amount of supervision needed to protect public safety, prosecutors, sentencing judges, and the parole board each have a role to play. In addition to assessing risk, these officials are invested with enormous discretion to consider mitigating circumstances, the impact of treatment, and the relative fairness of a given punishment.

2. The existence of safeguards to promote accuracy and fairness in decision-making

To ensure discretionary decisions are as fair and accurate as possible, Michigan has numerous safeguards built into its criminal justice system. While the nature and extent of these safeguards vary with the decisions being made, they always include, at a minimum, the opportunity for input by all sides. Indeed, the chance to be heard, which presents at least the possibility of affecting the outcome, is the essence of fairness. Prosecutors and defense attorneys, defendants and victims, can address both the sentencing court and the parole board.

Formal safeguards exist at every stage of the criminal justice process. Police decisions to arrest are reviewed by prosecutors who decide what charges, if any, to file. The prosecutor's charging decision is subject to review at a preliminary examination, where a judge decides whether a crime has been committed and whether there is probable cause the defendant committed it. If the defendant is bound over, s/he can demand that the prosecution prove guilt beyond a reasonable doubt at a bench or jury trial, the outcome of which can be appealed to a higher court. If judges choose to depart from the sentencing guidelines recommendation, their decision is also subject to appellate review. *See Lockridge,* 498 Mich. at 365.

Michigan's commitment to fair and accurate decision-making regarding citizens subject to state control extends well beyond the formalities of the

adjudication process. For people who are incarcerated, the MDOC has an entire hearings division that is responsible for hearings in the following matters:

(a) An infraction of a prison rule that may result in punitive segregation, loss of disciplinary credits, or the loss of good time.
(b) A security classification that may result in the placement of a prisoner in administrative segregation.
(c) A special designation that permanently excludes, by department policy or rule, a person under the jurisdiction of the department from community placement.
(d) Visitor restrictions.
(e) High or very high assaultive risk classifications.

M.C.L. § 791.251 (2).

Because they can result in segregation or affect the prisoner's future eligibility for release, the hearings division adjudicates all Class I misconduct citations. These include allegations of assault, fighting, possession of dangerous contraband (including tattoo devices and cell phones), possession of a weapon (which can include a rock found in the prison yard), substance abuse (which can include possession of expired prescription medications) and threatening behavior. The penalties for such violations are up to 10 days in segregation per violation (not to exceed 20 days total), up to 30 days toplock (confinement to quarters), up to 30 days loss of privileges, and restitution.[3]

[3] Penalties can also include the loss of good time or disciplinary credits for those people whose crimes pre-dated Michigan's adoption of "truth-in-sentencing" in 1999 which eliminated all such sentence reductions.

Prisoners accused of a Class I misconduct are entitled to a prompt formal hearing conducted by an administrative law judge (ALJ). They have the right to appear in person, to provide a written statement, to present witnesses and relevant documents, and to the assistance of a Hearings Investigator under Michigan Department of Corrections Policy Directive (P.D.) 03.03.105.

Citations for Class II and III offenses, which are less serious in nature and can result in lesser amounts of toplock and loss of privileges as well as hours of extra duty, but not segregation, are reviewed at informal hearings conducted by supervisory personnel at the institutional level.[4] Guilty findings for all levels of misconduct must be based on a preponderance of the evidence and reduced to writing, and are subject to appeal. *Id.*

Classification as a high or very high assault risk can have a severe impact on a prisoner. It means placement in a higher security level facility with more restrictive living conditions and greatly affects the likelihood of parole. Notably, people who feel they have been wrongly classified as high or very high assault risk are not only entitled to a formal hearing conducted by an ALJ and to request rehearing by the Hearings Administrator, they can appeal the rehearing decision to the state circuit court under P.D. 05.01.135(F).

[4] Class II misconducts include, for example, disobeying a direct order, misuse of state property, being out of place and insolence. Class III misconducts include excessive noise, horseplay and being out of place temporarily.

Prisoners pursuing release must persuade a parole board. The board has broad discretion to deny parole up to the point that the maximum sentence is served. Prisoners can seek correction of procedural errors, such as reliance on erroneous information, but cannot appeal the substantive decision. Nonetheless, parole decision-making is also cabined by procedures designed to promote fairness and accuracy. With limited exceptions, prisoners who are eligible for parole are interviewed by a parole board member at specified intervals. Rule 791.7715 of the Michigan Administrative Code lays out the factors the board should and should not consider. Notably, these state that a prisoner "shall receive" psychological examinations if there is a history of "predatory or assaultive sexual offenses" under Rule 791.7715 (5)(b). Other factors to consider include victims' statements, assessment of the person's potential for committing future crimes, and the scoring of parole guidelines required by statute. The board is required to grant release to people who score high probability of parole unless there are substantial and compelling reasons to deny release as defined by the Legislature under Rule 791.233(e).

People who are facing the prospect of incarceration because they have violated the terms of community supervision are entitled to basic due process protections. Probation revocation hearings are conducted by the sentencing court. MCR 6.445. Parole revocation hearings are conducted by the parole board under

M.C.L. § 791.240a. and Michigan Policy Directive 06.06.100. In both cases, the accused individual is entitled to representation by counsel, to testify, to present witnesses and documentary evidence, and to confront and cross-examine adverse witnesses. However, also in both cases, revocation is statutorily required if the accused "willfully" violated SORA. M.C.L. § 771.4a (probation); M.C.L. § 791.240a(2) (parole).

When the power of the state is exercised to restrict individual liberty, due process safeguards help to avoid decisions that are arbitrary, biased, overzealous, or simply mistaken. They set parameters that push the exercise of discretion to be informed by facts and to focus on the individual who is the subject of state control. The checks that Michigan has embedded in its criminal justice and corrections systems reflect the State's commitment to fairness and accuracy in the treatment of people not only accused of, but also convicted of, serious crimes.

3. Indeterminate sentencing to promote the goal of rehabilitation

The exercise of discretion is inherent in Michigan's system of indeterminate sentencing. Michigan has long held rehabilitation as a primary goal of punishment. In 1902, a ballot proposal amended the state constitution to permit the Legislature to enact an indeterminate sentencing scheme and to provide for parole. Mich. Const 1850, art. 4, sec. 47. The Michigan Supreme Court explained shortly thereafter that the amendment's purpose was "to reform criminals and to convert bad citizens into

good citizens, and thus protect society." *People v Cook,* 147 Mich 127, 132 (1907). The theory, the Court observed, "is that, when the prisoner has shown by his conduct that he may turn from his criminal career, he should have an opportunity, under favorable circumstances, to make the test." *Id.* The legislative authority to enact indeterminate sentencing currently appears in Mich. Const 1963, art. IV, sec. 45.

For indeterminate sentencing to work, three conditions must exist:

- Officials must have the authority to assess rehabilitation based on consideration of all the relevant facts.

- There must be sufficient space between the minimum and maximum sentences to make their decision meaningful. (*See People v Tanner*, 387 Mich. 683 (1972) (to allow parole board opportunity to exercise discretion and thereby preserve indeterminate sentencing, minimum sentence cannot exceed two-thirds of the maximum), *but see People v Powe,* 469 Mich 1032 (2004) (*Tanner* rule does not apply to life-maximum offenses).

- The prisoner or probationer must have adequate opportunity to demonstrate change.

Michigan's commitment to rehabilitation is demonstrated by current efforts to promote the success of people under community supervision and to reduce incarceration for technical violations of supervision conditions.[5]

While sentencing judges have broad discretion to set conditions of probation, by statute those conditions "must be individually tailored to the probationer, must specifically address the assessed risks and needs of the probationer, must be designed

[5] Technical violations include such conduct as missing an appointment, failing a drug test and not paying fines, fees or restitution.

to reduce recidivism, and must be adjusted if the court determines adjustments are appropriate." M.C.L. § 771.3(11).

The MDOC policy directive entitled "Case Management of Probationers and Parolees" begins with the following policy statement:

> The primary goal of parole/probation supervision is to protect the public. Public protection is enhanced through case management methods and practices that have been validated as increasing the likelihood of offender success in the community. Within the framework of statutory requirements, policy and procedure, and risk assessment results, Field Agents carry out their mission by utilizing professional judgment and experience in collaboration with community partners.

Mich. Dept. of Corr., P.D. 06.04.130.

When faced with probationers who have committed technical violations, sentencing judges must be guided by statutory constraints. A detailed system of graduated sanctions allows for short but increasing jail terms for the first three violations. M.C.L. § 771.4b. With limited exceptions, probation may not be revoked for a technical violation unless the probationer has been sanctioned for at least three previous technical violations. M.C.L. § 771.4b(4).

Similarly, parole agents deciding how to respond to technical violations are advised:

> The nature of the violation and the parolee's statistical risk levels, criminal history and prior supervision factors shall be considered when making this determination.

Mich. Dept. of Corr., P.D. 06.06.100(G).

4. Research-based practices to maximize public safety

Although not embedded in law, a contemporary tenet of criminal justice systems is to rely on *evidence* to develop "best practices." With the advent of technology that permits analysis of large quantities of data, researchers can test long-held theories and assumptions against demonstrable facts. Officials who want to exercise their discretion in the most rational and effective manner possible utilize data to refine policies, revise practices, and develop new programs. Evidence-based decision-making allows criminal justice officials to maximize public safety outcomes without employing excessive incarceration, overly restrictive community supervision and the unnecessary expenditure of public funds.

The shift in Michigan's criminal justice policies and practices over the last few decades arose from an enormous body of research on what is actually effective, i.e., "what works." E. Latessa and C. Lowenkamp, *What Works in Reducing Recidivism?*, 3 University of St. Thomas L. J 521-535 (2006), available at https://www.uc.edu/content/dam/uc/ccjr/docs/articles/What_Works_STLJ.pdf. That research has revealed the collateral consequences of prior policy choices and supported the development of new strategies for reducing crime.

The availability of reliable data has allowed the focus of criminal justice to move from a highly punitive approach to the goal of preventing future crime by enabling returning citizens to find housing, employment, access to education, and

fewer obstacles to reconnecting with family and supporters. The glaring exception to all this progress is SORA.

B. SORA is an outlier that conflicts with these fundamental tenets.

SORA is the ultimate relic of the "get tough" movement. In the context of all Michigan's efforts – both recent and longstanding – to protect public safety, SORA is not just an outlier, it is irrational. Under SORA the State imposes numerous punitive requirements on registrants and exposes thousands to a lifetime of public shaming, solely for the status of having once been convicted of a sex offense. SORA stands in direct opposition to the core principles of Michigan's criminal justice system.

No informed exercise of discretion. The operation of the criminal judicial and corrections systems depends on the exercise of informed discretion by officials. The application of the law to the proven facts of each individual's case is the essence of justice. Yet under SORA, no input from criminal justice officials is allowed. No individualized decisions are made. No one has the discretion to keep someone off the roster and virtually no registrant can be removed.[6] No official can minimize the information that is posted, decide on the appropriate tier, or change the length of the

[6] SORA does allow a tiny group of Tier I and juvenile registrants to petition for removal if they meet strict criteria. M.C.L. § 28.728c. They are still placed on the registry automatically in the first instance.

registry term. Although the purpose of the registry is supposed to be protection of the public, determination of actual risk is considered irrelevant.

The sole justification for abandoning the exercise of discretion in this unique circumstance is the assumption that a past conviction reliably predicts future dangerousness. However, as Plaintiffs have demonstrated, this assumption has been thoroughly debunked. Overwhelming research shows that people convicted of sex offenses have very low recidivism rates from the outset and those rates decline over time.[7]

Within ten years, most registrants are no more likely to commit a sex offense than any other member of the general public. To require lifetime registration, with no regard for actual risk, is simply not rational. It not only burdens the vast majority of registrants who pose no risk; it also wastes state and local resources and limits the usefulness of public information. The lack of a tailored approach serves to make the public feel unduly threatened – hardly a rational outcome for a legislative scheme.

[7] For example, a 2009 study examined the recidivism rates of 76,721 people sentenced in Michigan after 1981 and released for the first time from 1986 through 1999. Nearly 47 percent, including 3,005 sex offenders, were released between 1986 and 1992, well before SORA became effective in October 1995. Of the total 6,673 sex offenders in the study, only 3.1% were returned to prison within four years for a new sex offense. B. Levine, *Denying parole at first eligibility: How much public safety does it actually buy?*, Citizens Alliance on Prisons and Public Spending (August 2009), available at https://www.prisonpolicy.org/scans/cappsmi/denying_ parole _at_first_eligibility_2009.pdf.

Other consequences of SORA's mandatory nature make the irrationality even more apparent. To the extent that criminal defendants plead guilty to non-sex offenses to avoid having to register, SORA distorts the practice of plea negotiations. It reduces the transparency of criminal justice data when convictions fail to reflect the true nature of the crimes committed. This is not like reducing a charge to a lower level of the same type of conduct. By disguising the fact that a sex offense has occurred, such negotiated pleas do the opposite of what SORA seeks to promote. Yet they are often the only means available to prosecutors trying to enforce the law fairly under the circumstances. Letourneau, E. J., Levenson, J. S., Bandyopadhyay, D., Armstrong, K., S., & Sinha, D., (2010), *The Effects of Sex Offender Registration and Notification on Judicial Decisions*, Criminal Justice Review, 35, 295-317, available at https://journals.sagepub.com/doi/10.1177/0734016809360330.

In the ultimate example of counter-productive policy, SORA can also discourage survivors from reporting sexual abuse. The majority of sexual offenses are committed by someone the victim knows, and many survivors hesitate to shame their abusers through exposure online. Heather R. Hlavka & Christopher Uggen, *Does Stigmatizing Sex Offenders Drive Down Reporting Rates? Perverse Effects and Unintended Consequences*, 35 N. Kentucky L. Rev. 347, 368 (2008), available at http://users.soc.umn.edu/~uggen/Hlavka_Uggen_NKLR_08.pdf. Registration can also deter reporting by victims because many survivors view the supervision and

publicity associated with registries as a threat to their own privacy. *Id.* Officials have no way to mitigate these concerns.

SORA not only fails to utilize informed discretion in keeping people on the registry, it actively interferes with the exercise of discretion in other contexts. SORA usurps the roles of judges and parole board members when it *requires* the revocation of probation, parole, or Holmes Youthful Trainee Act (HYTA) status based on a single SORA violation of any kind. M.C.L. § 28.729 (5)-(7). Violations of administrative rules that are wholly unrelated to actual risk, like when and what to report and how much to pay, force sentencing judges to revoke probation or HYTA placement and the board to revoke parole when they might otherwise choose not to do so, at substantial cost to registrants, their families, and taxpayers. Prosecutors can only prevent this by not charging the violations at all, i.e., by choosing not to enforce SORA.

No safeguards to promote accuracy and fairness. Because decisions are not individualized under SORA, the safeguards that surround other decisions with punitive consequences do not exist. There is no hearing, no proof of risk required, no opportunity to present favorable evidence, no set of guidelines for decision-making and no higher-level review. Individuals cannot challenge being placed on the registry and, except in the narrow circumstances mentioned earlier, they cannot make their case for being removed from the registry.

The lack of safeguards further demonstrates SORA's irrationality. A prisoner accused of possessing a tattoo device or expired medication is entitled to a formal hearing before an ALJ because s/he might get 10 days in segregation. Even for misconduct that can result, at most, in some days spent on toplock or without privileges, prisoners are entitled to informal hearings. But someone with a conviction for a sex offense can be automatically left on the registry for life, with all the continuing consequences that entails.

A probationer who violates a probation condition by failing to report to their agent can receive no more than 15 days in jail for a first offense. If, however, a probationer who is on the registry fails once to meet SORA reporting requirements, their probation must be revoked.

A parolee who fails to report a change of address to her agent may simply be admonished. But, if she is on the registry and fails to report it within three days to law enforcement as SORA requires, her parole must be revoked.

SORA's lack of safeguards to promote fairness and accuracy within its punitive scheme sends a clear message: The State does not believe that anyone convicted of a sex offense is entitled to fairness or accuracy – ever.

Undermining the goal of rehabilitation. Ironically, in the name of crime prevention, SORA undermines the rehabilitative efforts that can actually prevent crime. By assuming everyone convicted of a sex offense is permanently dangerous,

SORA ignores the efforts of the MDOC to provide appropriate, risk-based sex offender treatment and to prepare people for reentry, and of the parole board to make risk-based release decisions. The theory underlying SORA is that sex offenders, particularly those on Tier III, can never be rehabilitated, so treatment results and risk assessments are not to be trusted.

Even more importantly, SORA directly conflicts with the principles of evidence-based community supervision. Statutes and policies governing the application and enforcement of probation and parole conditions stress the importance of risk and needs assessment. Field agents are expected to promote the success of probationers and parolees by providing assistance with proven supports such as stable housing, employment, and family reunification. Yet SORA undercuts these efforts, making it harder for registrants to obtain housing and employment and subjecting families to ongoing and pervasive stress.

The State is essentially contradicting itself. It promotes reentry programming as a means to public safety while deliberately making it harder for tens of thousands of registrants to live in the community successfully. This self-contradiction is not rational.

Failure to acknowledge available research. SORA, to say the least, is not evidence based. It ignores what has been learned over decades of research about which sex offenders are likely to recidivate, what treatment programs are effective,

and what kinds and quantities of community supervision do and do not work. It also ignores the large body of data that indicates the registry itself does more harm than good. To have reliable information available from the 30 plus years SORA has been in effect, yet to choose not to use that information to reevaluate and improve such an intrusive and punitive system of state control, is simply not rational.

CONCLUSION

SORA's inherent dismissal of data, of statistical tools, of decades of experience, of the judgment and competence of criminal justice professionals, and of the need for procedural safeguards is irrational. Its rejection of rehabilitation as a goal makes it an outlier in the Michigan criminal justice system. SORA is the legacy of an era when criminal justice policy was driven by emotion and "get tough" policies. It should be reevaluated in the bright light of 21st century knowledge and norms.

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Respectfully submitted,

/s/ Melissa M. Salinas
Melissa M. Salinas (MI-P69388)
University of Michigan Law School
701 South State Street
Room 2058, Jeffries Hall
Ann Arbor, MI 48109-1215
Phone: (734) 764-2724
Counsel for Amici Curiae

CERTIFICATE OF COMPLIANCE AND SERVICE

I hereby certify:

1. The above brief has been prepared using Microsoft Word 14-point Times New Roman font and contains 4411 words. It therefore complies with the type-volume limitations and typeface requirements of Federal Rules of Appellate Procedure 29(a)(5) and 32(g)(1).

2. The above brief was filed on October 1, 2025 using the Court's ECF system, which will send notice of this filing to all counsel of record indicated on the electronic receipt.

/s/ Melissa M. Salinas
Melissa M. Salinas (MI-P69388)
Counsel for Amici Curiae