OPPOSITION Response to HB 5356

Prohibiting registered sex offenders from utilizing school-based health centers

February 10, 2024

House Judiciary Committee:

West Virginians for Rational Sexual Offence Laws (WVRSOL) is a West Virginia non-profit association and an affiliate of the National Association for Rational Sexual Offence Laws (NARSOL), which advocates for society's segment that is adversely affected by the sex offender registry. We help families impacted by the registry, seek ways to maintain and improve public safety, recommend prudent use of state funding in this area, and work to ensure that proposed legislation is constitutional.

WVRSOL **opposes** HB 5356 because (1) its intent is based on outdated (2003), erroneous, and refuted preposterous data; (2) it invites litigation by creating a presence/distance restriction, which has been previously found unconstitutional; (3) and solves a problem that doesn't exist through panic legislation.

HB 5356 – prohibiting registered sex offenders from utilizing school-based health centers

1. The new code proposed as §61-8G-1-5 adds a prohibition on registered sex offenders from school-based health centers and establishes a new presence/distance restriction of the same.

Opposed to: legislation based on outdated (2003), erroneous, and refuted data

1. The record of empirical evidence that has been put forth since the 2003 SCOTUS decision, which said that "Sex offenders are a serious threat in this Nation." (McKune v. Lile :: 536 U.S. 24 (2002) :: Justia US Supreme Court Center, n.d.) and that "[T]he victims of sex assault are most often juveniles," and "[w]hen convicted sex offenders reenter society, they are much more likely than any other type of offender to be re-arrested for a new rape or sexual assault" (McKune v. Lile | Case Brief for Law Students | Casebriefs, n.d.) is long and refuting.

2. Taking the Sixth Circuit Court of Appeals decision in Does v. Snyder as a prime example, we see:

> Intuitive as some may find this, the record before us provides scant support for the proposition that SORA, in fact, accomplishes its professed goals. The record below gives a thorough accounting of the significant doubt cast by recent empirical studies on the pronouncement in Smith that "[t]he risk of recidivism posed by sex offenders is 'frightening and high.'" 538 U.S. at 103, 123 S.Ct. 1140 (quoting McKune v. Lile, 536 U.S. 24, 34, 122 S.Ct. 2017, 153 L.Ed.2d 47 (2002)). One study suggests that sex offenders (a category that includes a great diversity of criminals, not just pedophiles) are actually less likely to recidivate than other sorts of criminals. See Lawrence A. Greenfield, Recidivism of Sex Offenders Released from Prison in 1994 (2003). Even more troubling is evidence in the record supporting a finding that offense-based public registration has, at best, no impact on recidivism. [R. 90 at 3846–49]. In fact, one statistical analysis in the record concluded that laws such as SORA actually increase the risk of recidivism. (Does #1-5 v. Snyder, 834 F.3d 696, 704 (6th Cir. 2016))

3. The idea that those previously convicted of a sex crime are especially likely to re-offend sexually is a myth. A 2012 meta-analysis of sex offender recidivism rates published in Criminal Justice and Behavior found that most offenders' likelihood of committing another sexual offense over five years was around 7%. And a study of sex offender recidivism in Connecticut found an even lower rate of 3.6%. Emily Horowitz, a professor of sociology at St. Francis College and an expert on sex offense registries, says it best, "People who commit sex offenses have the lowest recidivism rate of almost any crime besides murder." In fact, most reconvictions for registrants are for paper violations of the ever-increasing civil regulatory registry requirements, not a new crime. Horowitz says, "The registry wasn't developed out of research; it was developed out of emotion and fear, which is a recipe for disaster in public policy." (Sex Offender Laws Are Broken. These Women Are Working To Fix Them., n.d.)

Opposed to: legislation that creates an unconstitutional and punishing presence/distance restriction

1. There is also no empirical evidence that the presence or distance restrictions make anyone safer. In fact, they do the opposite.

    a. In its decision, the Sixth Circuit Court of Appeals not only agreed but went on to declare that adding geographic exclusionary zones, among others, made Michigan's SORNA, post its 2006 and 2011 amendments, punishment and therefore could not be applied retroactively (Does #1-5 v. Snyder, 834 F.3d 696, 704 (6th Cir. 2016))

    b. Moreover, the Sixth Circuit Court of Appeals said that geographic exclusionary zones and in-person reporting requirements are onerous restrictions that are not supported by evolving research and best practices related to recidivism, rehabilitation, and community safety. (Does #1-5 v. Snyder, 834 F.3d 696, 704 (6th Cir. 2016))

    c. Additionally, Human Services professionals and nationally recognized experts on sexual abuse and sex offender legislation agree that distance restrictions are counterproductive. According to Gina Puls (Puls, 2016), residency restrictions, which prevent sex offenders from living within an established distance of various places where children gather, have created enormous hardship for released sex offenders as they attempt to reintegrate into society, and the effectiveness of these laws has increasingly been rejected.

2. Establishing presence or distance restrictions expands the use and impact of registry law in West Virginia. It invites litigation if passed as it transitions the WV registry from a "civil regulatory schema" into a "criminal punishment schema," which violates the Ex post facto clauses of the West Virginia and US Constitutions.

    a. Article III, Section 4 of the West Virginia Constitution prohibits "No bill of attainder, ex post facto law, or law impairing the obligation of a contract, shall be passed." (West Virginia Constitution, n.d.) There is little doubt that this bill could be anything other than a retroactive increase in punishment, ex post facto, because it seeks to place retroactive restrictions and punishment on registrants who have completed their court-ordered sentences.

b. Other jurisdictions have attempted to impose similar restrictions, only to have them stricken on constitutional grounds – most recently in Does v. Snyder, where the Sixth Circuit Court of Appeals determined Michigan's SORNA to be punishment and may not be applied retroactively. (Does #1-5 v. Snyder, 834 F.3d 696, 704 (6th Cir. 2016))

Opposed to: panic legislation that purports to solve a problem that doesn't exist

1. HB 5356 is panic legislation that addresses a problem that doesn't exist with a solution that doesn't work.

   a. There are no known cases where a person forced to register interfered with or committed a sexual offense while using a school-based health center in West Virginia.

   b. This is panic legislation for a problem that doesn't exist, presumably to appease the public and garnish votes. Similar to what Catherine Carpenter concluded in her "Panicked Legislation" Journal of Legislation article when she said, "Ultimately, Panicked Legislation is a cautionary tale about hastily crafted lawmaking intended for only one purpose: to appease a fearful public." (Carpenter, 2022)

WVRSOL supports legislation that actually works to reduce abuse and sexual offenses, help children and families, and improve public safety. Unfortunately, HB 5356 does none of these things. Therefore, we oppose and respectfully urge the House, its members, and the House Judiciary Committee to reject HB 5356.

Sincerely,

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