

OPPOSITION Response to HB 2443
Clarifying where convicted sex offenders may reside.
February 17, 2025

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 2443 because it is entirely unnecessary and unconstitutional on several fronts. Moreover, it tends to introduce the draconian act of banishment into the Code of West Virginia, which no one can sanely support.

HB 2443 is entirely unnecessary.

1. It addresses a problem that does not exist. There is absolutely no empirical evidence that suggests distance restrictions make anyone safer. In fact, just the opposite.
 - The Sixth Circuit Court of Appeals not only agreed but declared 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.

Moreover, the Sixth Circuit Court of Appeals said that geographic exclusionary zones and in-person reporting requirements are onerous restrictions not supported by evolving research and best practices related to recidivism, rehabilitation, and community safety. (Does v. Snyder)

2. 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.

Constitutional Issues

1. 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." (Constitution of West Virginia) 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. Specific examples of the punitive nature of this bill are:
 - Piling on onerous restrictions retroactively that are not supported in research or empirical evidence (*Riley v. New Jersey State Parole Board*, 39 A.3d 200, 209 N.J. 595 2012); and
 - Providing for a felon penalty for non-compliance.
2. 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. (*Doe v. Snyder*, 101 F. Supp. 3d 672 E.D. Mich. 2015).

Void for Vagueness Doctrine

1. It would be difficult for registrants to know with certainty how to comply with this language. It would not likely survive a "void for vagueness" challenge. The "void-for-vagueness doctrine" requires a statute to be clear enough for those subject to it to understand what conduct would render them liable to its penalties. The standard for determining whether a statute provides fair notice is "whether persons of common intelligence must necessarily guess at [the statute's] meaning." (*Galloway v. State*, 781 A.2d 851)

- With the current language, "... prohibited from residing within 3000 feet of the real property comprising a public or nonpublic elementary or secondary school, a childcare facility, a residential child-caring agency, a children's group care home or any playground, ballpark or other recreational facility utilized by persons under the age of 18 years." registrants would have to guess at what constitutes "reside"; does this include periods visiting friends or family, for how many days, is this a permanent residency or temporary and does it matter, etc. How do you measure 3,000 feet? Is the measurement door-to-door, property line-to-property line, etc.? What constitutes a "school"; does this include public, private, religious, boarding, parochial, Montessori, etc. schools? What constitutes a "childcare facility," "child-caring agency," "children's group care home," or "playground." My neighbor has a jungle gym that the neighborhood kids love to play in. Is my neighbor's backyard a "playground?" etc.?
- With the current language, each jurisdiction would have to unilaterally decide what constitutes the above definitions, which violates the second criterion that criminal statutes provide "legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer the penal laws." (Bowers v. State, 389 A.2d 341)
- With the current language, there are no provisions addressing pre-existing residences, no provisions for the financial implications of forcing registrants and their families from their privately-owned property should it fall into the 3,000-foot restriction, and no provisions for what should happen if there is a pre-existing residence and a new school or childcare facility is open/built thereafter.

Void for Overbroad Doctrine

1. A law is considered "overbroad" when it is "not sufficiently restricted to a specific subject or purpose." (FindLaw Legal Dictionary)
 - HB 2443 applies to "All registrants," not just those whose offense involved a minor or who are on parole, probation, or supervised release.

WVRSOL supports legislation that reduces abuse and sexual offenses, helps children and families, and improves public safety. Unfortunately, HB 2443 does none of these things. Therefore, we **oppose** and respectfully urge the House, its members, and the House Judiciary Committee to **reject HB 2443.**

Sincerely,

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