



April 8, 2019

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

The Honorable Bill de Blasio
Mayor of New York City
City Hall
New York, NY 10007

Re: Proposed Lifetime Ban from MTA Transit System

Dear Governor Cuomo and Mayor De Blasio,

We are organizations that represent people charged with/convicted of sex offenses and/or organizations concerned with fairness in the administration of criminal justice. We write in response to your recent remarks regarding Councilmember Chaim Deutsch's proposal to ban anyone with two or more misdemeanor sex offenses from the MTA transit system for the rest of their life.¹ Because this proposal – like the unconstitutional, unenforceable, and counterproductive movement and residency restrictions that New York already imposes on certain people convicted of sex offenses,² – exalts fear and stereotype over science and research while imposing a significant burden on former offenders' fundamental rights, we urge you to reject it. Instead, New York can and should become a leader in the implementation of evidence-based laws, policies and practices for people convicted of sex offenses.

Policies that push people convicted of sex offenses into the shadows are detrimental to public safety and will only serve to undermine effective reintegration. Over the last few decades, experts in the field of sexual offending behavior have consistently concluded that

¹ Michael Gold, *Serial Sex Offenders Are a Big Problem on Subways. Should They Be Banned for Life?*, N.Y. Times (Mar. 20, 2019), available at <https://www.nytimes.com/2019/03/20/nyregion/mta-subway-sex-offenders.html>; Nolan Hicks, et al., *City, state working to bar repeat sex crime offenders from subways: de Blasio*, N.Y. Post (Mar. 20, 2019), available at <https://nypost.com/2019/03/20/city-state-working-to-bar-repeat-sex-crime-offenders-from-subways-de-blasio/>.

² New York Executive Law § 259-c(14) prohibits people who are classified as Level Three sex offenders and people who were convicted of committing sexual offenses against children from setting foot within 1,000 feet – approximately four city blocks – of school grounds while on parole or post-release supervision (“PRS”). As implemented, this restriction banishes these individuals from almost all of New York City and large areas of New York State.

treatment and support are key to both public safety and the prevention of future sexual violence. Banishment and residency restrictions do not achieve these goals. For example, the Association for the Treatment of Sexual Abusers (ATSA) explains that banishment policies

create more problems than they solve, including homelessness, transience, and clustering of disproportionate numbers of offenders in areas outside of restricted zones. Housing instability can exacerbate risk factors for reoffending. Therefore, in the absence of evidence that these laws accomplish goals of [] protection, ATSA does not support the use of residence restrictions as a feasible strategy for sex offender management.³

The Department of Justice echoed these concerns, concluding:

[T]here is no empirical support for the effectiveness of residence restrictions. In fact, a number of negative unintended consequences have been empirically identified, including loss of housing, loss of support systems, and financial hardship that may aggravate rather than mitigate offender risk.⁴

Councilmember Deutsch’s proposal for a lifetime ban from the city’s public transit system flies in the face of this data-driven evidence. Instead of promoting public safety, this proposal restricts thousands of poor people – those with the economic means would, of course, still have access to private transportation – to areas solely within walking distance of their homes. Given the overwhelming reliance on the public transportation system in New York City, this is effectively a denial of access to work, worship, medical and mental health treatment, and participation in civic life. Indeed, many people would not be able to comply with supervision obligations, including reporting to parole officers. Thus, banishment from the transit system operates as a punishment reserved for the working class and the poor. Those who are genuinely concerned about criminal activity in the transit system should focus on the underlying causes of sexually offending behavior, ensuring adequate availability of mental health assistance, and creating public awareness.

Moreover, when a person is convicted of a theft, or even a violent criminal act on the subway, they are not banned from ever using public transportation again. The behavior is addressed by punishment or other alternatives that seek to curb future negative behaviors. Why is subway crime of a sexual nature any different? The recent proposal of a lifetime MTA

³ Association for the Treatment of Sexual Abusers, *Sexual Offender Residence Restrictions*, at 2 (Aug. 2, 2014), available at <http://www.atsa.com/pdfs/Policy/2014SOResidenceRestrictions.pdf>.

⁴ Christopher Lobanov-Rostovsky, U.S. Dep’t of Justice, Office of Justice Programs, *Sex Offender Management Assessment and Planning Initiative*, Chapter 8: Sex Offender Management Strategies (2014), available at https://ojp.gov/smart/SOMAPI/sec1/ch8_strategies.html (including participants from NY DCJS and OMH).

ban is based in hysteria rather than in fact or science.⁵ At a time when state and national leaders are thinking carefully about ways to reform the criminal justice system, a truly progressive legislative agenda demands forward-thinking, evidence-based, data-driven solutions to sexual misconduct, not counterproductive laws built on fear and misconceptions.

Juvenile life without parole sentencing and the federal crack/powder sentencing disparity are two failed criminal justice policies that stand as powerful cautionary tales about the dangers of policymaking based on fear instead of facts. Both laws were driven by a combination of junk science and public hysteria about predatory criminals; and both laws contributed to the mass incarceration crisis in the United States.⁶ Citing New York's residency restrictions as precedent for further banishment policies risks repeating those same mistakes.

For all these reasons, we urge you to not support Councilmember Deutsch's proposal.

Sincerely,

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⁵ Guy Padraic Hamilton-Smith, *New York Lawmakers Want to Ban Sex Offenders from the Subway. That Won't Solve Anything*, *The Appeal* (Apr. 1, 2019), available at <https://theappeal.org/new-york-subway-sex-offenders-ban>.

⁶ Nick Straley, *Miller's Promise: Re-Evaluating Extreme Criminal Sentences for Children*, 89 Wash. L. Rev. 963 (Oct. 2014) (discussing judicial recognition that juvenile life-without-parole sentences are cruel and unusual because social and medical science demonstrates that adolescents typically age out of impulsive behavior and are more capable of change); Barry C. Feld, *Youth Matters: Miller v. Alabama and the Future of Juvenile Sentencing*, 11 Ohio St. J. Crim. L. 107 (2013) (same); United States Sentencing Commission, *The Crack Sentencing Disparity and the Road to 1:1* (2009), available at https://www.ussc.gov/sites/default/files/pdf/training/annual-national-training-seminar/2009/016b_Road_to_1_to_1.pdf (discussing how unsupported belief that crack cocaine was more dangerous than powder led to sentencing scheme that disproportionately affected low-income black communities).

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