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September 21, 2020

Hon. John P. Asiello
Clerk of the Court
Court of Appeals of the State of New York
20 Eagle Street
Albany, New York 12207

Re: *Matter of Green v. LaClair*, No. APL-2020-00124

Dear Mr. Asiello:

Please accept this letter and the attached addendum as the Rule 500.11 submission of appellants Darwin LaClair, Superintendent of Franklin Correctional Facility; the New York State Department of Corrections and Community Supervision ("DOCCS"); and the New York State Division of Parole in the above-captioned case.

This case presents the same question that is currently before the Court—and thus will be controlled by the outcome—in *People ex rel. Negron v. Superintendent, Woodbourne Correctional Facility*, Case No. APL-2019-00091: whether Executive Law § 259-c(14) requires that *all* persons being released to community supervision who are level-3 sex offenders must be prescribed the condition that they not knowingly enter within 1,000 feet of any school property.[1] As briefly explained below—and more fully explained in the briefs filed in *Negron*—that question should be answered in the affirmative. Accordingly, the Court should reverse the decision of the Appellate Division, Third Department, which annulled a determination by the New York State Board of Parole to

[1] *Negron* is fully briefed and will be argued on October 13, 2020.

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impose that condition on petitioner Roland Green, a level-3 sex offender who is currently on post-release supervision ("PRS").

STATEMENT OF THE CASE

In 1989, petitioner was convicted in Supreme Court, New York County, of rape in the first degree and robbery in the first degree. (R. 107.[2]) For those offenses, he was sentenced to an aggregate indeterminate term of 5 to 15 years' in prison. (R. 107.) On the basis of the rape conviction, after notice and a hearing, petitioner was designated a level-3 sex offender under the Sex Offender Registration Act ("SORA"). (R. 99-100.) A level-3 risk designation is SORA's most serious, indicating that "the risk of repeat offense is high and there exists a threat to the public safety." Correction Law § 168-l(6). Petitioner finished serving his sentence for the 1989 conviction in 2003. (R. 35.)

In 2007, petitioner was convicted in Supreme Court, New York County, of robbery in the second degree and burglary in the third degree. (R. 106.) He was sentenced to an aggregate determinate term of 13 years in prison and 5 years on PRS (R. 106), a form of supervised release authorized for violent felony offenders, predicate felony offenders, and persons who commit certain sex or drug offenses, *see* Penal Law §§ 70.00(6), 70.70, 70.80.

In 2017, petitioner reached the conditional release date of the imprisonment portion of his aggregate robbery and burglary sentence. (R. 40.) The Board of Parole determined, however, that because petitioner was a level-3 sex offender, Executive Law § 259-c(14) required it to impose upon him the condition of release that he not knowingly enter "school grounds" as that term is defined by Penal Law § 220.00(14), *i.e.*, any area within 1,000 feet of school property. (R. 44-45.) Section 259-c(14) requires the school-grounds condition

> where a person serving a sentence for an offense defined in article one hundred thirty, one hundred thirty-five or two

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[2] Citations of the form "(R. ___)" refer to pages of the record on appeal filed in the Third Department.

> hundred sixty-three of the penal law or section 255.25, 255.26 or 255.27 of the penal law and the victim of such offense was under the age of eighteen at the time of such offense *or* such person has been designated a level three sex offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law, is released on parole or conditionally released.

Id. (emphasis added). The Board reads this language as requiring the condition for, among others, *all* persons being released to community supervision who are level-3 sex offenders, regardless of the offense underlying the sentence from which they are currently being released.

Petitioner was unable to obtain any housing that complied with the school-grounds condition, and was for that reason retained in DOCCS custody during the remainder of his determinate prison term. (R. 47.) He filed a petition for a writ of habeas corpus in Supreme Court, Franklin County, alleging an entitlement to conditional release on the ground that Executive Law § 259-c(14) did not apply to him. (R. 22-32.) In 2018, Supreme Court issued a decision denying relief. Finding that a habeas proceeding was not the appropriate vehicle to seek conditional release, the court converted the petition to a proceeding under C.P.L.R. article 78. (R. 13.) On the merits, the court agreed with the Board's reading and held that section 259-c(14) applied to petitioner. (R. 14-17.)

In September 2019, petitioner completed his determinate prison term and was transferred to a DOCCS residential treatment facility ("RTF") to begin serving his term of PRS. In April 2020, the Third Department reversed Supreme Court's decision denying relief. 182 A.D.3d 877 (3d Dept. 2020). The court relied on its intervening 2019 decision in *Negron*, which held that section 259-c(14) requires the school-grounds condition for persons being released to community supervision who are level-3 sex offenders *only if* they are currently serving sentences for offenses enumerated in that provision—robbery and burglary not among them.

This Court granted leave to appeal.

ARGUMENT

EXECUTIVE LAW § 259-C(14) REQUIRES THAT *ALL* PERSONS RELEASED TO COMMUNITY SUPERVISION WHO ARE LEVEL-3 SEX OFFENDERS MUST BE PRESCRIBED THE CONDITION THAT THEY NOT KNOWINGLY ENTER SCHOOL GROUNDS

Executive Law § 259-c(14) should be read as the Board of Parole reads it: as requiring *all* persons being released to community supervision who are level-3 sex offenders to be prescribed the condition that they not knowingly enter school grounds. The text of section 259-c(14), while susceptible of more than one reading, is reasonably read the way the Board reads it. And as compared with the reading offered by the Third Department below, the Board's reading more faithfully implements the Legislature's intent.

A. The Text of Section 259-c(14) Is Ambiguous and Can Plausibly Be Read as the Board Reads It.

Executive Law § 259-c(14) sets forth three criteria that are potentially relevant to the determination of whether the school-grounds condition is required: (A) current service of a sentence for an enumerated offense "and" (B) commission of that offense against a victim who was less than 18 years of age "or" (C) designation as a level-3 sex offender. Not all three criteria must be present at once, however; the word "or" shows that the statute establishes alternative situations in which the condition is mandatory. But the "and/or" structure of the provision makes two alternative readings equally plausible as a grammatical matter, and the provision is therefore ambiguous. *See Harder v. First Cap. Bank*, 332 Ill. App. 3d 740, 745 (Ill. Ct. App. 2002) (finding that a document that used "the language 'A and B or C'" was "ambiguous as a matter of law").

The Board reads the statute to make the condition mandatory either when 'A' and 'B' exist, or when 'C' exists alone. That is, the Board reads the statute to require the school-grounds condition either when a person is both (A) "serving a sentence for an offense defined in article one hundred thirty, one hundred thirty-five or two hundred sixty-three of the penal law or section 255.25, 255.26 or 255.27 of the penal law" and

(B) "the victim of such offense was under the age of eighteen at the time of such offense," or else when (C) "such person"—meaning the person who may or may not have satisfied the first two criteria—"has been designated a level three sex offender pursuant to subdivision six of section one hundred sixty-eight-l of the correction law" is released on parole or conditionally released. Executive Law § 259-c(14) (alphabetical labels and emphasis added). On this reading, the school-grounds condition is mandated for "a person" released to community supervision whenever the third criterion above is satisfied, *i.e.*, whenever "such person has been designated a level three sex offender."

While the Third Department's alternative reading is also grammatically permissible, the Board's reading is more reasonable, as shown by the widespread endorsement of that same reading by courts and other authorities. This Court assumed the Board's reading was correct, without ruling on it, in *Matter of Gonzalez v. Annucci*, 32 N.Y.3d 461, 473 n.5 (2018). Three Departments of the Appellate Division have expressly adopted the Board's reading, and even the Third Department, after rejecting that reading in *Negron*, casually described section 259-c(14) as applying to community-supervision releasees "who were *either* serving a sentence for an enumerated offense against children *or* had been designated risk level three sex offenders," *People ex rel. Johnson v. Superintendent, Adirondack Corr. Facility*, 174 A.D.3d 992, 994-95 (3d Dept. 2019) (emphases added).[3] And the Board's reading has been endorsed by 16 different New York State trial judges; the Board of Parole and DOCCS; numerous individual New York State legislators; commentators; and affected school boards. (*See* Addendum.)

B. All Other Relevant Evidence Shows that the Board's Reading of Section 259-c(14) More Faithfully Implements the Legislature's Intent.

Although the relevant text of Executive Law § 259-c(14) is ambiguous, the other relevant evidence of the provision's meaning is not.

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[3] Elsewhere in *Johnson*, however, the Third Department described section 259-c(14) more consistently with *Negron*.

That evidence strongly shows that the Legislature's intent is more faithfully implemented by the Board's reading.

1. The Board's Reading Better Tracks the Legislative History.

The memorandum in support of the bill that became the 2005 amendment which brought the relevant portion of Executive Law § 259-c(14) into its present form, authored by its sponsor, focused on the goal of prohibiting level-3 sex offenders on community supervision from entering school grounds. And the memorandum did so without any qualification based upon the nature of the offense underlying those offenders' current sentences; it stated without qualification that the aim of the bill was "[t]o prohibit sex offenders placed on conditional release or parole from entering upon school grounds or other facilities *where the individual has been designated as a level three sex offender*." Sponsor's Mem., Bill Jacket, L. 2005, ch. 544, at 4 (emphasis added). The memorandum further explained, again without qualifiers, that the bill would amend SARA "to require that, as a condition of parole or conditional release, that *individuals designated as level three sex offenders* refrain from entering upon school grounds or other facilities where children are cared for." *Id.* (emphasis added).

Letters to the Governor regarding the bill conveyed this same understanding, sometimes in terms that were even more explicit. For example, a representative of the New York State Education Department wrote that the legislation would "amend subdivision 14 of section 259-c of the Executive Law to require, as a condition of parole or conditional release, that *any individual designated as a level three sex offender* is prohibited from entering school grounds." Letter from Kathy A. Ahearn, July 8, 2005, Bill Jacket, L. 2005, ch. 544, at 6 (emphasis added). Additionally, representatives of the New York Civil Liberties Union opined that the law "would apply [the school-grounds] restriction to *all persons designated 'Level Three' sex offenders*," thereby "including *all Level Three offenders* within its regulatory scheme." Letter from Robert A. Perry & Christian Smith-Socaris, Aug. 18, 2005, Bill Jacket, L. 2005, ch. 544, at 18-19 (emphases added).

By contrast, the legislative history contains no affirmative support for the Third Department's reading of section 259-c(14).

2. The Board's Reading Better Advances the Legislature's Remedial Purpose.

The Board's reading also does a better job than the Third Department's reading of advancing the Legislature's remedial purpose in enacting Executive Law § 259-c(14) and amending it into its present form: protecting the public, particularly children, from becoming victims of sex crimes. For that reason, too, it should prevail. *See People v. Coleman*, 24 N.Y.3d 114, 122 (2014) (adopting a party's interpretation of a provision of the Criminal Procedure Law "because it is more consistent with the statute's remedial purpose" than the interpretation offered by that party's adversary).

SARA, of which section 259-c(14) is a part, is a "remedial statute" that was "designed to protect the public, specifically children, from future crime" of a sexual nature. *Matter of Williams v. Department of Corr. & Community Supervision*, 136 A.D.3d 147, 155 (1st Dept. 2016), *lv. dismissed*, 29 N.Y.3d 990 (2017). The Board's reading of section 259-c(14), which renders the school-grounds condition mandatory for *all* level-3 sex offenders on community supervision, advances SARA's public-protection purpose to the greatest possible extent. And it furthers this purpose to a greater extent than the reading offered by the Third Department, under which the condition is mandatory for only *some* level-3 sex offenders on community supervision, namely those who are currently serving sentences for enumerated offenses.

Thus, under the Board's reading—but, again, not under the Third Department's—the school-grounds condition is mandatory for all persons released to community supervision who are level-3 sex offenders by virtue of an *unenumerated* sex offense. The judicial determination that a sex offender should be classified as level-3 provides ample assurance that the school-grounds condition will be imposed only on persons who pose genuine threats to the community. Unenumerated sex offenses include, for example:

- the New York State offenses of unlawful surveillance (Penal Law § 250.50), luring a child (Penal Law § 120.70), disseminating indecent material to minors (Penal Law § 235.22), patronizing a minor for prostitution (Penal Law §§ 230.11, 230.12, 230.13), promoting the prostitution of a minor (Penal Law § 230.30(2)), sex trafficking (Penal Law § 230.34), and sex trafficking of a child (Penal Law § 230.34-a);

- offenses committed in another jurisdiction that, if committed in New York, would constitute any of the above sex offenses or any of the sex offenses enumerated in Executive Law § 259-c(14);

- felonies committed in another jurisdiction for which registration as a sex offender in that jurisdiction is required; and

- the federal crimes of promoting or facilitating the prostitution of a minor via interstate or foreign commerce (18 U.S.C. §§ 2422(b), 2423, 2425), promoting or facilitating the production, distribution, or receipt of child pornography in interstate or foreign commerce (18 U.S.C. §§ 2251, 2252, 2252A, 2260), and interstate or foreign sex trafficking of children (18 U.S.C. § 2251A).

Compare Executive Law § 259-c(14) (listing enumerated offenses) *with* Correction Law § 168-a(2) (listing all sex offenses).

3. The Board's Reading Better Avoids Counterintuitive Results.

Courts "must presume" that the Legislature could not have intended an interpretation of a statute that produces "unreasonable and unjust consequences." *Matter of Ellington Constr. Corp. v. Zoning Bd. of Appeals of Vill. of New Hempstead*, 77 N.Y.2d 114, 124-125 (1990). The Third Department's reading of section 259-c(14) yields results that, even

if not outright unreasonable and unjust, are nevertheless counterintuitive.

On the Third Department's reading, the school-grounds condition is mandatory only for those persons being released to community supervision who are level-3 sex offenders *and* are currently serving a sentence for an enumerated offense. But the Legislature would not have had any good reason to impose that qualification, because for *all* level-3 sex offenders "the risk of repeat offense is high and there exists a threat to the public safety," Correction Law § 168-l(6). There is thus no readily apparent reason why the Legislature, in its effort to protect the public from future crime of a sexual nature, would have required the school-grounds condition for the community supervision of persons who are level-3 sex offenders only if they are currently serving sentences for enumerated offenses: *All* community-supervision releasees who are level-3 sex offenders, at all times, present a clear and present criminal sexual danger.

Nor does the current-sentence distinction appear tailored to advancing the Legislature's goal of protecting children in particular. Most of section 259-c(14)'s enumerated offenses do not have as an element that the victim be a minor. And some especially heinous offenses that *do* include as an element the victim's minor status, including a variety of offenses under Penal Law Article 230, are not among those enumerated in section 259-c(14). As a result, applying the Third Department's reading, one Supreme Court recently held that the school-grounds condition was not required for a level-3 sex offender on community supervision from a sentence for the sex trafficking of minors—not an enumerated offense—even though "such deplorable conduct would certainly seem to fit the spirit of Executive Law § 259-c(14)." *People ex rel. Jordan v. Superintendent, Washington Corr. Facility*, Index No. 30514, 2019 N.Y. Misc. LEXIS 5050, at *1-3 (Sup. Ct. Washington County Aug. 20, 2019).

As the Board's reading of the provision recognizes, the Legislature could not have intended for section 259-c(14) to be capable of producing these strange consequences.

CONCLUSION

For the reasons explained above, and explained more fully in the briefing to this Court in *Negron*, the decision of the Third Department below should be reversed and petitioner's converted C.P.L.R. article 78 petition dismissed.

Respectfully submitted,

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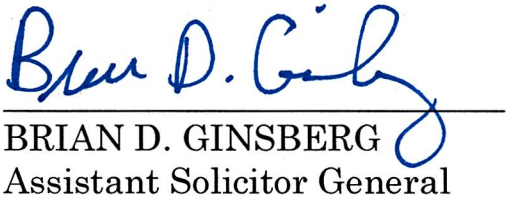

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ADDENDUM

This addendum collects selected sources that have read SARA as requiring that *all* persons being released to community supervision who are level-3 sex offenders be prescribed the condition that they do not knowingly enter school grounds. The sources are categorized by type of author, and within each category they are presented in chronological order.[1]

COURTS

1. ***People v. Blair*, 23 Misc. 3d 902, 907 (Albany City Ct. 2009) (Keefe, J.)**

   Stating that "when sex offenders (with victims under the age of 18) and level three offenders are sentenced to conditional discharge or probation, the sentencing court 'must require [the school-grounds condition] as a mandatory condition of such sentence'" (quoting Penal Law 65.10(4-a))

2. ***People v. Conti*, 27 Misc. 3d 453, 454 n.1 (Dunkirk City Ct. 2010) (Drag, J.)**

   "Penal Law § 65.10(4-a) requires, as a mandatory condition of a sentence of probation, or conditional discharge that a level three sex offender, or a person convicted of a specified sex offense whose victim was under the age of eighteen at the time of the offense, that such offender 'refrain from knowingly entering into or upon any school grounds, as that term is defined in Penal Law § 220.00(14)."

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[1] This addendum represents an abbreviated collection of relevant sources in light of the word limit imposed by Rule 500.11(m). A fuller addendum is attached to the opening brief for the Superintendent of Woodbourne Correctional Facility filed in this Court in *Negron*.

3. ***People v. McFarland*, 35 Misc. 3d 1243(A), at *3 (Sup. Ct. N.Y. County 2012) (Conviser, A.J.)**

Stating that "a Level 3 sex offender on parole is not permitted to live within 1000 feet of a school" (citing Executive Law § 259-c(14))

4. ***People v. Vasquez*, 38 Misc. 3d 408, 413 (Sup. Ct. N.Y. County 2012) (Merchan, A.J.)**

Stating that "as a level three sex offender, defendant is prohibited from living within 1,000 feet of a school while he is on parole supervision" (citing Executive Law § 259-c(14))

5. ***People ex rel. White v. Superintendent, Woodbourne Corr. Facility*, 45 Misc. 3d 1202(A), at *2 (Sup. Ct. Sullivan County 2014) (LaBuda, A.J.)**

Finding that DOCCS's decision to place a petitioner in a residential treatment facility in order to achieve compliance with SARA residency restrictions "was necessary and appropriate considering petitioner's classification as a Level III sex offender and as a condition of his post-release supervision"

6. ***People v. Diack*, 24 N.Y.3d 674, 681 (2015)**

Stating that whereas Executive Law § 259-c(14) as originally enacted required the school-grounds condition only for inmates who are serving a sentence for "an enumerated sex offense, where the victim of the offense was under the age of 18 at the time the offense was committed," in 2005 "the legislature extended the school grounds mandatory condition to sex offenders designated level three"

7. ***People ex rel. Johnson v. Superintendent, Fishkill Corr. Facility*, 47 Misc. 3d 984, 987 (Sup. Ct. Dutchess County 2015) (Forman, A.J.)**

"Executive Law § 259-c(14) compels [DOCCS] to impose the school grounds condition on all level three sex offenders during their entire period of postrelease supervision."

8. ***D'Angelo v. Graham*, Index No. 538/15, 2015 N.Y. Misc. LEXIS 5327, at *1-2 (Sup. Ct. Dutchess County Apr. 2, 2015) (Rosa, J.)**

"As a Level three sex offender under Article 6-c of the Corrections Law, petitioner is obligated to comply with Executive Law § 259-c(14)" upon his release to community supervision.

9. ***Matter of Williams v. Department of Corr. & Community Supervision*, 136 A.D.3d 147, 155 (1st Dept. 2016)**

Stating that while Executive Law § 259-c(14) originally "only applied to sex offenders convicted of certain enumerated offenses and only if the victim had been under the age of 18," the provision's "coverage was extended to include sex offenders who are classified as high risk, level three sex offenders"

10. ***Matter of Walker v. Stanford*, 61 Misc. 3d 171, 174 (Sup. Ct. Albany County 2016) (Ferreira, A.J.)**

Finding that the interpretation of Executive Law § 259-c(14) "as applying to all individuals who have been adjudicated a level three sex offender without regard to the type of offense for which they are serving a sentence is supported by a plain reading of the statute"

11. ***Matter of Charles v. Griffin*, Index No. 52101/2016, 2017 N.Y. Misc. LEXIS 7877, at *2-3 (Sup. Ct. Dutchess County Jan. 11, 2017) (Egitto, A.J.)**

"There is no question that a Level 3 sex offender, as Petitioner is designated, may not reside within 1000 feet of a school or facility as defined in Penal Law § 220.00(14)(b)."

12. ***People ex rel. Negron v. Superintendent, Woodbourne Corr. Facility*, Index No. 1673-2016, 2017 N.Y. Misc. LEXIS 5481, at *4 (Sup. Ct. Sullivan County Feb. 8, 2017) (Schick, J.)**

"When Executive Law § 259-c(14) was amended in 2005, it subjected Level 3 sex offenders to mandatory conditions for parole release and said designation would remain for an offender's lifetime. Although the petitioner's latest crime is not a sex offense, he remains a designated Level 3 sex offender for the balance of his life based upon his prior designation under SORA and SARA."

13. ***Matter of Cajigas v. Stanford*, Index No. 655-16, 2017 N.Y. Misc. LEXIS 5480, at *8 (Sup. Ct. Albany County Feb. 10, 2017) (Elliott, J.)**

Finding that Executive Law § 259-c(14) "applies to all level three sex offenders whether they are currently serving a sentence for a designated sex offense or not."

14. ***Matter of State of New York v. Floyd Y.*, 56 Misc. 3d 271, 277 n.7 (Sup. Ct. N.Y. County 2017) (Conviser, A.J.)**

"Among the categories of sex offenders who must abide by the statutory 1,000 foot rule are those on probation or parole who have been designated as being at a high risk to re-offend (that is, designated as a 'level three sex offender') under the Sex Offender Registration Act, even in cases where such offenders have never offended and have never been determined to be at any risk to offend against a child." (citing Executive Law § 259-c(14); Penal Law § 65.10(4-a)(a))

15. ***Sandora v. City of New York,* Index No. 2740/17, 2017 N.Y. Misc. LEXIS 3723, at *14 (Sup. Ct. Queens County Sept. 21, 2017) (Lane, J.)**

Stating that the 2005 SARA amendments "extended the school grounds mandatory condition to sex offenders designated level three" (citing Executive Law § 259-c(14))

16. ***People ex rel. Durham v. Department of Corr. & Community Supervision*, 63 Misc. 3d 192, 194-195 (Sup. Ct. Wyoming County 2018) (Mohun, A.J.)**

Finding that Executive Law § 259-c(14) "requires the imposition of the mandatory condition upon parolees who fall within either of two categories—those who are serving a sentence for a designated offense which involved a victim under the age of 18, and those who are level 3 sex offenders"

17. ***People ex rel. McCurdy v. Warden, Westchester County Corr. Facility*, 164 A.D.3d 692, 693 (2d Dept. 2018)**

Noting "the requirement of the Sexual Assault Reform Act that level three sex offenders reside more than 1,0000 feet from any school grounds" (citing Executive Law § 259-c(14))

18. ***People ex rel. Green v. LaClair*, Index No. 2018-101, 2018 N.Y. Misc. LEXIS 3492, at *10 (Sup. Ct. Franklin County Aug. 15, 2018) (Feldstein, A.J.)**

Finding that the Legislature amended Executive Law § 259-c(14) in 2005 "to include all level three sex offenders regardless of whether their current parole is related to a sentence for a sex offense"

19. ***People ex rel. Garcia v. Annucci*, 167 A.D.3d 199, 204 (4th Dept. 2018)**

Finding that the 2005 amendment to Executive Law § 259-c(14) could reasonably be read "to extend the school grounds mandatory

condition to all persons conditionally released or released to parole who have been designated level three sex offenders"

20. ***Matter of Gonzalez v. Annucci*, 32 N.Y.3d 461, 473 n.5 (2018)**

"The SARA-residency requirement, which is imposed based on either an offender's conviction of a specifically enumerated offense against an underage victim or the offender's status as a level three sex offender, is a mandatory condition of petitioner's PRS." (citing Penal Law 65.10(4-a))

21. ***People ex rel. Durham v. Annucci*, 170 A.D.3d 1634, 1635 (4th Dept. 2019)**

Finding that the 2005 amendment to Executive Law § 259-c(14) could reasonably be read "to extend the school grounds mandatory condition to all persons conditionally released or released to parole who have been designated level three sex offenders"

22. ***Matter of Rodriguez v. Stanford*, Index No. 1267-18, Slip Op. at 9 (Sup. Ct. Albany County Feb. 4, 2019) (Elliott, J.)**

Finding that Executive Law § 259-c(14) "applies to all level three sex offenders whether they are currently serving a sentence for a designated sex offense or not"

23. ***Matter of Flynn v. Stanford*, Index No. 1268-18, Slip Op. at 8 (Sup. Ct. Albany County Feb. 5, 2019) (Elliott, J.)**

Finding that Executive Law § 259-c(14) "applies to all level three sex offenders whether they are currently serving a sentence for a designated sex offense or not"

24. ***People ex rel. Winters v. O'Meara*, 63 Misc. 3d 1208(A), at *10 (Sup. Ct. St. Lawrence County Mar. 28, 2019) (Feldstein, A.J.)**

Finding that the Legislature amended Executive Law § 259-c(14) in 2005 "to include all level three sex offenders regardless of whether their current parole is related to a sentence for a sex offense"

25. ***Erazo v. Girbing*, 64 Misc. 3d 773, 774 (Sup. Ct. Orange County 2019) (Brown, A.J.)**

"Executive Law § 259-c(14) was intended to extend the school grounds mandatory condition to all persons conditionally released or released to parole who have been designated level three sex offenders."

26. ***People ex rel. Johnson v. Superintendent, Adirondack Corr. Facility*, 174 A.D.3d 992, 994-995 (3d Dept. 2019)**

Stating that, in Executive Law § 259-c(14), the Legislature "imposed the restriction upon sex offenders who were either serving a sentence for an enumerated offense against children or had been designated risk level three sex offenders"

27. ***People ex rel. Delgado v. Superintendent, Fishkill Corr. Facility*, Index No. 478/2019, 2019 N.Y. Misc. LEXIS 5261, at *3 (Sup. Ct. Dutchess County Sept. 26, 2019) (Greenwald, J.)**

Executive Law § 259-c(14) "is applicable to two categories of persons. The first category is a person serving a sentence for the defined offenses stated in Executive Law § 259-c(14) and the victim of such offense was under the age of eighteen at the time of the offense. The second category is a person that has been designed a level three sex offender pursuant to subdivision 6 of section 168-l of the New York Correction Law."

28. ***People ex rel. Rosario v. Superintendent, Fishkill Corr. Facility*, 180 A.D.3d 920 (2d Dept. 2020)**

Holding that Executive Law § 259-c(14) "is amenable to competing interpretations" as a matter of statutory text and that "[t]he legislative history clearly supports an interpretation that imposes the SARA-residency requirement based on either an offender's conviction of a specifically enumerated offense against an underage victim *or* the offender's status as a level three sex offender"

ADMINISTRATIVE AGENCIES

29. **New York State Department of Corrections and Community Supervision, *Directive No. 8305: Sexual Assault Reform Act (SARA) Mandatory Condition*, at 2 (Oct. 2012)**

"Executive Law § 259-c, subdivision 14 requires the Board of Parole to impose the mandatory [school-grounds] condition of release upon all offenders who are released to the community on or after 2/01/2001 who are level 3 sex offender registrants *or* offenders serving one or more sentences [for certain offenses] where the victim was under the age of 18 at the time of the offense." (some capitalization omitted)

30. **New York State Department of Corrections and Community Supervision, *Directive No. 8303: Sex Offender Registrants/ Placement of Certain Sex Offenders in the Community*, at 4 (Oct. 2013)**

"Executive Law § 259-c, subdivision 14 requires the Board of Parole to impose the mandatory [school-grounds] condition of release upon all offenders who are released to the community on or after 2/01/2001 who are level 3 sex offender registrants *or* offenders serving one or more sentences [for certain offenses] where the victim was under the age of 18 at the time of the offense." (some capitalization omitted)

31. **New York State Department of Corrections and Community Supervision, *Directive No. 8305: Sexual Assault Reform Act (SARA) Mandatory Condition*, at 2 (Apr. 2015)**

"Executive Law § 259-c, subdivision 14 requires the Board of Parole to impose the mandatory [school-grounds] condition of release upon all offenders who are released to the community on or after 2/01/2001 who are level 3 sex offender registrants *or* offenders serving one or more sentences [for certain offenses] where the victim was under the age of 18 at the time of the offense." (some capitalization omitted)

32. **New York State Department of Corrections and Community Supervision, *Directive No. 8303: Sex Offender Registrants/ Placement of Certain Sex Offenders in the Community*, at 5 (May 2015)**

"Executive Law § 259-c, subdivision 14 requires the Board of Parole to impose the mandatory [school-grounds] condition of release upon all offenders who are released to the community on or after 2/01/2001 who are level 3 sex offender registrants *or* offenders serving one or more sentences [for certain offenses] where the victim was under the age of 18 at the time of the offense." (some capitalization omitted)

33. **New York State Department of Corrections and Community Supervision, *Directive No. 8305: Sexual Assault Reform Act (SARA) Mandatory Condition*, at 2 (Dec. 2015)**

"Executive Law § 259-c, subdivision 14 requires the Board of Parole to impose the mandatory [school-grounds] condition of release upon all offenders who are released to the community on or after 2/01/2001 who are level 3 sex offender registrants *or* offenders serving one or more sentences [for certain offenses] where the victim was under the age of 18 at the time of the offense." (some capitalization omitted)

34. New York State Department of Corrections and Community Supervision, *Directive No. 8303: Sex Offender Registrants/ Placement of Certain Sex Offenders in the Community*, at 5 (Aug. 2016)

"Executive Law § 259-c, subdivision 14 requires the Board of Parole to impose the mandatory [school-grounds] condition of release upon all offenders who are released to the community on or after 2/01/2001 who are level 3 sex offender registrants *or* offenders serving one or more sentences [for certain offenses] where the victim was under the age of 18 at the time of the offense." (some capitalization omitted)

35. New York State Department of Corrections and Community Supervision, *Community Supervision Handbook*, at 41 (July 2017)

"A mandatory condition of release applies to you if you are a Level-3 sex offender or were released to the community on or after 2-1-01 and are serving one or more sentences for a specified sex offense, and the victim was under the age of 18 at the time of the offense. You will not be allowed to be near or enter upon any school grounds or any other facilities or institutions primarily used for the care and treatment of persons under the age of 18, unless you meet certain criteria and have the written permission of your Parole Officer."

36. New York State Department of Corrections and Community Supervision, *Directive No. 8305: Sexual Assault Reform Act (SARA) Mandatory Condition*, at 2 (Feb. 2018)

"Executive Law § 259-c, subdivision 14 requires the Board of Parole to impose the mandatory [school-grounds] condition of release upon all offenders who are released to the community on or after 2/01/2001 who are level 3 sex offender registrants *or* offenders serving one or more sentences [for certain offenses] where the victim was under the age of 18 at the time of the offense." (some capitalization omitted)

37. **New York State Department of Corrections and Community Supervision, *Directive No. 8305: Sexual Assault Reform Act (SARA) Mandatory Condition* (Nov. 2018)**

"Executive Law § 259-c, subdivision 14 requires the Board of Parole to impose the mandatory [school-grounds] condition of release upon all offenders who are released to the community on or after 2/01/2001 who are level 3 sex offender registrants *or* offenders serving one or more sentences [for certain offenses] where the victim was under the age of 18 at the time of the offense." (some capitalization omitted)

INDIVIDUAL STATE LEGISLATORS

38. **Assemblyman William L. Parment, *Assemblyman William L. Parment Highlights New Laws that Affect You and Your Family* (Nov. 2005)**

Stating that SARA as amended in 2005 "prohibits any Level 3 sex offender placed on probation, conditional release or parole from being on school grounds or certain other facilities where children are cared for"

39. **Assemblyman Bill Magnarelli, *Fighting for Central New York Families* (Dec. 2005)**

Stating that the 2005 SARA amendment "[r]equire[s] Level 3 sex offenders placed on conditional release or parole to be banned from entering school grounds or other facilities where children are cared for"

40. **Assembly Speaker Sheldon Silver, *2005 Legislative Session Summary* (Dec. 2005)**

Stating that the 2005 SARA amendment "prohibit[s] any Level three sex offender placed on probation, conditional release or parole from being on school grounds or certain other facilities where children are cared for"

COMMENTATORS

41. **Barry Kamins, *2005 Legislation Affecting the Practice of Criminal Law*, 78 N.Y. State Bar J. 20, 21 (2006)**

Statin that the 2005 SARA amendments "prohibit level-three sex offenders who are on probation form entering school buildings, playgrounds, athletic fields, and day care centers while minors are present" (citing Penal Law § 65.10(4-a))

42. **Caitlin J. Monjeau, *Note: All Politics is Local: State Preemption and Municipal Sex Offender Residency Restriction in New York State*, 91 B.U. L. Rev. 1569, 1583 (2011)**

"An individual who has committed a qualifying offense or has been given a level three designation may not 'knowingly enter[] into or upon any school grounds . . . or any other facility or institution primarily used for the care of treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present.'" (quoting Penal Law § 65.10(4-a))

SCHOOL BOARDS

43. **Niagara Falls City School District Board of Education, *Notification of Sex Offenders Policy* (Mar. 2008)**

"A designated Level 3 sex offender shall not be permitted upon such school grounds or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen (18) while one or more of such persons are present, unless so permitted by court order." (citing Executive Law § 259-c(14); Penal Law § 65.10(4-a))

44. **New York State School Boards Association, *Court Strikes Down Local Restrictions on Locations of Sex Offenders' Homes* (Mar. 2, 2015)**

Stating that SARA "prohibits level 3 sex offenders (deemed to be at 'high risk of repeat offense') who have been placed on conditional release or parole from knowingly entering school grounds or other facilities where children are cared for while one or more persons under age 18 is present"

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Rule 500.11 letter, including the addendum, contains 5,932 words and thus complies with the word limit set by 22 N.Y.C.R.R. § 500.11(m).

September 21, 2020

Respectfully submitted,

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AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

Anne M. Smigel, being duly sworn, deposes and says:

I am over eighteen years of age and an employee in the office of LETITIA JAMES, Attorney General of the State of New York, attorney for Respondent(s) herein.

On the 21st day of September, 2020, I served the annexed **Letter Brief** upon the attorney named below by depositing a true copy thereof, properly enclosed in a sealed, postpaid wrapper, in a letter box of the Capitol Station Post Office in the City of Albany, New York, a depository under the exclusive care and custody of the United States Post Office Department, directed to the said attorney at the address within the State and Respectively designated by him for that purpose as follows:

Michael E. Cassidy, Esq.
Prisoners' legal Services of New York
24 Margaret Street, Suite 9
Plattsburgh, New York 12901

Sworn to before me this
21st day of September, 2020.

Cristal R. Gazzelone
NOTARY PUBLIC

Anne M. Smigel

CRISTAL R. GAZZELONE
Notary Public, State of New York
[illegible]
Qualified in Rensselaer County
Commission Expires April 2, 2024