

ORIGINAL

IN THE SUPREME COURT OF OHIO

STATE OF OHIO,	:	
	:	Case No. 2009-0088
Plaintiff-Appellee,	:	
	:	On Appeal from the Warren
vs.	:	County Court of Appeals
	:	Twelfth Appellate District
GEORGE WILLIAMS,	:	
	:	C.A. Case No. CA2008-02-029
Defendant-Appellant.	:	

MERITS BRIEF OF AMICI CURIAE CLEVELAND RAPE CRISIS CENTER AND TEXAS ASSOCIATION AGAINST SEXUAL ASSAULT IN SUPPORT OF THE APPELLANT

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INTRODUCTION

Ohio's Adam Walsh Act ("Ohio's AWA"), OHIO REV. CODE § 2950.01, *et. seq.*, enacted on June 30, 2007, fundamentally transformed classification, registration, and community notification requirements under Ohio's sex offender laws. In particular, the pre-AWA law classified adult sex offenders based on the individual's likelihood of committing future offenses and the offender's risk to the community. The AWA abandons risk based classifications for offense based classifications.

While protecting Ohioans from sex offenders is a compelling interest—and indeed, is the core mission of each of the *Amici*—none of the changes implemented as part of Ohio's AWA has been proven to achieve that goal. Research shows that the law's more burdensome requirements on law enforcement, the public, and sex offenders can cause *higher* levels of recidivism and thus pose *increased* danger to the community. More onerous sex offender registration and community notification laws threaten to harm the very people they are intended to protect and to undermine goals of community safety and treatment of offenders. These laws perpetuate myths and create a false sense of security. Research demonstrates that victimization can be reduced when sex offenders successfully reenter the community. These changes also put law enforcement agencies, already in budgetary crises, in the position of spending precious dollars on monitoring low risk individuals with a limited impact on public safety. Thus, any argument that Ohio's AWA is simply a remedial law designed to protect children and the public from sexual abuse and sex crimes is seriously flawed. Ohio's AWA is not based on empirical evidence or proven research, but on fear and misinformation.

STATEMENT OF INTEREST OF AMICI CURIAE

The *Amici* are organizations committed to working on behalf of victims and witnesses of sexual violence to prevent further violence. Each of the *Amici* believes this goal is best achieved

through evidence-based practices and policies. And each of the *Amici* believes Ohio's Adam Walsh Act conflicts with this goal.

The Cleveland Rape Crisis Center (CRCC) is dedicated to serving survivors of sexual violence and those who support them with free comprehensive healing and advocacy services, and to creating social change in the community through education, training, and activism. CRCC promotes prevention by providing education on the root causes and pervasive costs of sexual assault, and recruiting community members to act as advocates to eliminate it.

The Texas Association Against Sexual Assault ("TAASA") is the statewide organization committed to ending sexual violence in Texas. A nonprofit educational and advocacy organization based in Austin, TAASA member agencies comprise a statewide network of over eighty crisis centers that serve rural as well as metropolitan areas. Founded in 1982, the agency has a strong record of success in community education, youth outreach, law enforcement training, legislative advocacy, and curricula and materials development.

STATEMENT OF FACTS

Amici adopt the statement of facts presented in the brief of Appellant George Williams.

ARGUMENT

I. THE RECLASSIFICATION OF SEX OFFENDERS UNDER OHIO'S AWA IS DRIVEN BY FEAR, NOT FACTS.

More sweeping sex offender laws are growing in number across the country. The proliferation of more burdensome and costly laws, however, is driven by fear, not facts. Most scholars agree that registration and notification laws were passed with misinformation and faulty assumptions about sex offenders. These laws were passed with no research or evidence that such expensive and onerous schemes would prevent new offenses and with little regard to the long-term affect on public safety in general.

Tragic cases of child abduction and sexually motivated murder receive extraordinary media attention, and the publicity creates a public sense of alarm and urgency. In reality, however, such cases are extremely rare. Less than 1% of all murders involve sexual assault, and in fact, the prevalence of sexual murders declined by about half between the late 1970s and the mid 1990s. Bureau of Justice Statistics, *Sex Offenses and Offenders: An Analysis of Data on Rape and Sexual Assault*, 27 (1997).

Moreover, a 2000 Department of Justice study found that 93% of child sexual abuse victims knew their abuser, 34.2% were family members, and 58.7% were well-known acquaintances. Bureau of Justice Statistics, *Sexual Assault of Young Children as Reported to Law Enforcement: Victim, Incident, and Offender Characteristics*, 10 (2000). Only 7% of child victims reported that they were abused by strangers. *Id.* These conclusions are confirmed by a 2007 Minnesota study, which found that the vast majority (79%) of recidivists selected victims with whom they had a previous relationship—whether social or biological. Minn. Dep’t of Corr., *Residential Proximity & Sex Offense Recidivism in Minn.* (2007), <http://www.corr.state.mn.us/documents/04-07SexOffenderReport-Proximity.pdf>.

Thus, laws that notify or register people based on the crimes they commit miss the heart of the problem of sex-based crimes: protecting potential child victims from attackers they know. And these laws may lull parents into a false sense of security. If parents believe that they can protect their children by consulting the registry, they will not be focused on protecting their children from individuals they know and trust who are far more likely to offend against their child.

Proponents of more onerous registration and community notification statutes point to allegedly high sex offender recidivism rates as a justification for such laws. Research, however,

contradicts the misunderstanding that most sex offenders will re-offend. For example, the Department of Justice found that only 5.3% of sex offenders were rearrested for a new sex crime within three years after release from prison. Bureau of Justice Statistics, *Recidivism of Sex Offenders Released From Prison in 1994*, 24 (2003). Moreover, studies by Canadian researchers, who examined recidivism statistics for more than 29,000 sex offenders in North America and Europe, found a 14% recidivism rate among all sex offenders. See R. Karl Hanson & Monique T. Bussiere, *Predicting Relapse: A Meta-Analysis of Sexual Offender Recidivism Studies*, 66 J. OF CONSULTING & CLINICAL PSYCHOL. 348-362 (1998); R. Karl Hanson & Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (2004). See also Ohio Dep't of Rehab. & Corr., *Ten-Year Recidivism Follow-Up of 1989 Sex Offender Releases* 12, (2001) (reporting total sex offense related recidivism rate of 11% over ten-year period, and characterizing sex offense recidivism as a "fairly unusual" occurrence in Ohio). More recently, the Indiana Department of Correction found that only 1.05% of released sex offenders returned to prison for a new sex offense within 3 years of their release. Indiana Dep't of Corr., *Recidivism Rates Decrease for 3rd Consecutive Year* (2009) <http://www.in.gov/idoc/files/IDOCRecidivism.pdf>. While it is true that official recidivism data (for any offense type) underestimates actual re-offense rates, it is clear, based on the research discussed above, that the majority of sexual offenders are unlikely to commit new sex offenses.¹

¹ Some studies, based on older data, have suggested higher recidivism rates. See, e.g., Robert A. Prentky, Austin F.S. Lee, Raymond A. Knight, & David Cerce, *Recidivism Rates Among Child Molesters and Rapists: A Methodological Analysis*, 21 LAW & HUM. BEHAV. 635, 643 (1997) (reporting an estimated recidivism rate of 52%, but only among sex offenders who chose boys as their victims, a very targeted subset of all sexual offenders). Drawing conclusions about current recidivism rates based upon old data is unwarranted, however. For example, the subjects of the Prentky study were sex offenders released from prison during the period 1959-1985, before treatment became widespread and state-of-the-art. Additionally, the subjects were the proverbial "worst of the worst," men who were civilly committed for repeat and/or aggressive sex offenses. Because the subjects of the Prentky study were not necessarily representative of sex offenders

II. CLASSIFYING OFFENDERS BASED ON OFFENSE AT CONVICTION HARMS PUBLIC SAFETY.

Over 95% of sex offenders will eventually re-enter the community. Cleveland Rape Crisis Center, *Sex Offender Management* at <http://www.clevelandrapecrisis.org/news/public-policy-updates/sex-offender-management>. Research demonstrates that stability and support increase the likelihood of successful reentry for former offenders, and that public policies making it more difficult for former offenders to succeed undermine public safety. *See, e.g.*, JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* (Oxford Univ. Press 2003). With respect to sex offenders in particular, research has shown that isolation, unemployment, depression, and instability—conditions known as dynamic risk factors—correlate with increased recidivism. *See, e.g.* R. Karl Hanson & Kelly Morton-Bourgon, *Predictors of Sexual Recidivism: An Updated Meta-Analysis* (2004); Colo. Dep't of Public Safety, *Report on Safety Issues Raised by Living Arrangements for and Location of Sex Offenders in the Community* (2004); Candace Kruttschnitt, Christopher Uggen & Kelly Shelton, *Predictors of Desistance Among Sex Offenders: The Interaction of Formal and Informal Social Controls*, 17 JUST. Q., No. 1, 61-88 (2000).

Research shows that gainful employment contributes to the likelihood that an offender will not commit another crime. P. Gendreau, T. Little, and C. Goggin, *A Meta-Analysis of the Predictors of Adult Crime Recidivism: What Works*, 34 CRIMINOLOGY 575-607 (1996). For example, a 2001 risk assessment study by Virginia's Criminal Sentencing Commission found

(continued...)

generally, the authors issued two caveats: (1) “[t]he obvious heterogeneity of sexual offenders precludes automatic generalization of the *rates* reported here to other samples,” and (2) “these findings should *not* be construed as evidence of the inefficacy of treatment,” since “the treatment services [available to the subjects of the study] were not provided uniformly or systematically and did not conform to a state-of-the-art mode.” *Id.* at 656-57 (emphasis in original).

that, among other factors, sex offenders who did not have regular employment were more likely to re-offend than sex offenders who had stable employment. Va. Crim. Sentencing Comm'n, *Assessing Risk Among Sex Offenders in Va.* (January 15, 2001)

http://www.vcsc.state.va.us/sex_off_report.pdf. Other studies have shown that stable employment and access to treatment programs greatly contribute to lower rates of recidivism.

Candace Kruttschnitt, Christopher Uggen, and Kelly Shelton, *Predictions of Desistance Among Sex Offenders: The Interactions of Formal and Informal Social Controls*, 17 JUST. QUARTER., No. 1, 67-87 (2000).

Community notification and publication of a sex offender's identity, home address, place of work, and other identifying information can profoundly affect the sex offender's life. As a result, the stresses of notification (shame, isolation, anxiety, and depression) can trigger recidivism in some offenders. Jill Levinson and Leo Cotter, *The Effects of Megan's Law on Sex Offender Reintegration*, 21 J. OF CONTEMPORARY CRIM. JUST., No. 3, 298-300 (2005); Richard Tewskbury, *Collateral Consequences of Sex Offender Registration*, 21 J. OF CONTEMPO. CRIM. JUST., No. 1, 67-81 (2005); Human Rights Watch Report, *No Easy Answers, Sex Offender Laws in the U.S.*, vol. 19, no. 4(G), 62 (September 2007).

Blanket community notification based on offense of conviction may also drive sex offenders underground, and away from treatment programs, gainful employment, and law enforcement monitoring and supervision. Human Rights Watch Report, *No Easy Answers, Sex Offender Laws in the U.S.*, vol. 19, no. 4(G), 79 (September 2007). When the threat of community notification drives sex offenders underground, their ability to access gainful employment and critical treatment programs is severely curtailed. The isolation and inability to

maintain social connections make an otherwise low-risk offender more likely to re-offend. This is directly contrary to the goals of sex offender laws and puts the public in greater danger.

III. OFFENSE-BASED CLASSIFICATION MAKES MONITORING THE MOST DANGEROUS OFFENDERS MORE DIFFICULT AND COSTLY FOR LAW ENFORCEMENT.

The “one size fits all” approach to classification fails to account for individual facts and circumstances and can impede efforts to monitor the offenders considered to be the most dangerous and most likely to commit additional sex crimes. Under Ohio’s former sex offender laws, which classified adult offenders based on individualized, risk-based judicial determinations, the sex offender registry reflected what research has shown about the likelihood of recidivism and focused resources on high risk adults. *Hearing on the Sex Offender Registration and Notification Act (SORNA) Before the H. Comm. On the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security* (March 10, 2009) (statement of Amy Borrer, Public Information Officer, Office of the Ohio Public Defender). Under the former risk based system of classification, 77% of Ohio’s sex offenders were classified in the lowest “sexually oriented offenders” category, 4% were in the middle category, and 18% were in the highest “sexual predator” category. *Id.* After the initial reclassification, Tier I contained only 13% of sex offenders, while Tier III, the dangerous category, contained 54% of sex offenders. *Id.* clearly the new scheme results in low risk offenders being inappropriately classified as serious offenders.

A recent study on the effectiveness of conviction based classifications found that registered sex offenders classified as Tier I were rearrested for sex offenses more often and sooner than Tier II or Tier III offenders. The study concluded that actuarial tools such as the Static 99 yielded a more accurate prediction than the AWA Tier levels, and the Tier level was almost completely ineffective at categorizing based on risk. *Freeman, Naomi J. and Sadler,*

Jeffrey C., *The Adam Walsh Act: A False Sense of Security or an Effective Public Policy*, *CRIM. JUSTICE POLICY REV.* (2009). Additionally the Ohio Department of Corrections found in its ten-year sex offender recidivism study that of the small number of sex offenders that did repeat sex crimes 99% did so within 9 years of being released from prison. Keeping most sex offenders on the registry past the ten year mark does not make empirical or financial sense. Ohio Dep't of Rehab. & Corr., *Ten-Year Recidivism Follow-up of 1989 Sex Offender Releases*, 12 (2001).

Despite these findings, law enforcement must now register three times the number of people in this category. All of the Tier III offenders must register four times per year and are subject to community notification. This puts a tremendous burden on law enforcement budgets that are already thinly stretched, with limited, if any, impact on public safety.

This also confuses the public and causes the community to focus on convicted offenders instead of more likely perpetrators. 95.9% of rape arrests and 94.1% of child molestation arrests were of first time offenders, meaning people not on the registry. Jeffrey C. Sandler, Naomi J. Freeman, and Kelly M. Socia, "Does a Watched Pot Boil? A Time-Series Analysis of New York State's Sex Offender Registration and Notification Law." *Psychology, Public Policy, and Law*, Vol. 14, No. 4, Nov. 2008. This same study found no changes in the sex crime rates of either convicted sex offenders or first time offenders before or after registry laws were passed in New York. *Id.*

Perhaps even more problematic than the increased numbers of *low risk* "Tier III" offenders is the possibility that *high risk*, likely re-offenders will be classified into one of the lower tiers because the new classification scheme irrationally fails to account for individualized circumstances. Consider an offender who pleads to a lower offense, but is subsequently determined to be a dangerous, high-risk offender. This high-risk offender will be subject to less

monitoring and no community notification simply because he originally pleaded to a lower-tier offense. In effect, law enforcement and the courts will be forced to wait until the sex offender commits another crime, and creates another victim, before being able to properly monitor this offender. *Hearing on the Sex Offender Registration and Notification Act (SORNA) Before the H. Comm. On the Judiciary, Subcommittee on Crime, Terrorism, and Homeland Security* (March 10, 2009) (statement of Amy Borrer, Public Information Officer, Office of the Ohio Public Defender).

By classifying adult and juvenile offenders based on offense of conviction, the law creates a three-fold increase in the number of offenders who will be subject to community notification. This increase affects the usefulness of the sex offender database by diluting the percentage of serious offenders listed, making the identification of the truly dangerous offenders very difficult. This Court acknowledged this problem in *State v. Eppinger* (2001), 91 Ohio St. 3d 158, 165: “if we were to adjudicate all sexual offenders as sexual predators, we run the risk of ‘being flooded with a number of persons who may or may not deserve to be classified as high-risk individuals, with the consequence of diluting both the purpose behind and the credibility of the law. This result could be tragic for many.’” *Id.* This theoretical tragedy will become reality under Ohio’s AWA as the database becomes merely a repository for people convicted of various sex crimes, but not actually dangerous to the public. The Nat’l Alliance to End Sexual Violence, *Legislative Analysis: The Adam Walsh Child Protection and Safety Act of 2006*, http://www.naesv.org/Polycypapers/Adam_Walsh_Sum_March07.pdf.

Recent data show that those states whose legislation is most narrowly drawn to focus on the highest-risk offenders are most likely to achieve their legislative goals. A sex offender registration system is most effective where it uses actuarial risk-assessment measures to ascertain

which sex offenders are at the highest risk of reoffending, distinguishes among offenders based on risk, and imposes the disabilities of registration and publication only on those most likely to recidivate. This type of registration and publication system allows the public to readily identify the most dangerous individuals and allows law enforcement to focus its resources on the most likely threats to the community. Cohen, M., & Jeglic, E. L. (2007). *Sex offender legislation in the United States: What do we know?* International Journal of Offender Therapy and Comparative Criminology, 51.

CONCLUSION

Increased community notification and registration requirements neither decrease recidivism among adult and juvenile sex offenders nor promote public safety and the protection of Ohio's children. To the contrary, more burdensome restrictions undermine public safety goals by ostracizing and isolating offenders, potentially leading to *higher* rates of recidivism. The new registration and community notification laws are difficult for Ohio's law enforcement professionals to enforce and will divert precious resources from monitoring truly dangerous individuals. Ohio's AWA is not a remedial law designed to protect children and the public from sexual abuse and sex crimes; it is a counterproductive and unempirical overreaction driven by fear and misinformation.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **Merit Brief of Amici Curiae Cleveland Rape Crisis Center and the Texas Association Against Sexual Assault in Support of the Appellant** has been sent by regular U.S. mail, postage prepaid, to Michael Greer, Assistant Warren County Prosecutor, addressed to his office at the Warren County Courthouse, 500 Justice Drive, Lebanon, Ohio 45036, on this 4th day of October, 2010.

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