

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT

FIVE REGISTERED SEX OFFENDERS:)
 JOHN DOE, RICHARD ROE, MICHAEL)
 MOE, CHARLES COE, and PAUL POE,)
 on behalf of themselves and other persons)
 similarly situated,)
)
 Plaintiffs,)
)
 v.)
)
 CITY OF LYNN,)
)
 Defendant.)

AFFIDAVIT OF PROFESSOR JILL S. LEVENSON, Ph. D.

I, Jill S. Levenson, hereby state under penalty of perjury that:

- I am an associate professor at Lynn University, College of Liberal Education, department of Psychology, located in Boca Raton, Florida. I earned my Doctorate degree in Social Welfare in 2003 at Florida International University in Miami, Florida. I earned a Masters Degree in Social Work in 1987, at the University of Maryland, School of Social Work, Baltimore, Maryland. In 1985, I earned my Bachelor of Arts Degree in Sociology at the University of Pittsburgh, Pittsburgh, Pennsylvania. I am the author of over eighty articles, publications, and presentations in the area of sex offender recidivism, treatment, and policies regulating sex offenders. In addition to my academic work, I maintain a clinical practice as a licensed clinical social worker evaluating and treating sex offenders. I have qualified to testify as an expert in numerous judicial

proceedings involving sex offenders. I have testified by invitation before five state legislatures concerning sex offender legislation. My curriculum vitae, including a list of my published work, is attached to this affidavit as Exhibit A.

2. Based on my clinical experience, my research and studies and a comprehensive review of the literature, I can state the following with respect to the impact of residence restrictions which prevent sex offenders from living within close proximity to places where children congregate:
 - a. There is no established empirical link between residential restrictions and reduced sexual recidivism. In a study of Iowa's statewide 2,000 foot residential restriction law which went into effect in August 2005, researchers compared the number of charges filed for sex offenses with minor victims in the 12 months prior to the enforcement of the law with the number of charges filed within 24 months after implementation. The number of charges steadily increased each year; there were 913 charges filed during the year prior to implementation, 928 filed the subsequent year, and 1,095 the following year. The authors concluded that Iowa's residence law "does not seem to have led to fewer charges or convictions, indicating that there probably have not been fewer child victims" (Blood, Watson, & Stageberg, 2008, p. 10). (The full citation to published materials cited herein appears below.)
 - b. There is no established correlation between proximity to schools or child care facilities and sex offense recidivism. Zandbergen, Levenson and Hart (2010) compared recidivists and non-recidivists (n = 330) who lived within common buffer zones in Florida. Groups of offenders living within 1,000, 1,500, or 2,500 feet of schools or daycare centers showed no differences in their reoffending patterns. Those

living closer to schools or daycares were not more likely to reoffend sexually than those who lived farther away. A meaningful correlation was not evident between sexual reoffending and proximity to schools ($r = .004$; $p = .940$) or daycares ($r = -.043$; $p = .433$). The sample was matched on relevant risk factors (prior arrests, age, marital status, predator status) and when the distances to schools and daycares were entered along with risk factors into a statistical model, proximity measures were not significant predictors of recidivism (Zandbergen, Levenson, & Hart, 2010).

Researchers in Colorado also concluded, after mapping the addresses of sex offenders, schools, and daycare centers, that recidivists were randomly scattered throughout the geographical area and did not live closer to schools or daycares (Colorado Department of Public Safety, 2004).

- c. A close analysis of 224 recidivistic sex offenses in Minnesota revealed that residence restriction laws would not have prevented even one repeat sex crime (Duwe, Donnay, & Tewksbury, 2008). Sex offenses against children were most frequently perpetrated *not* by strangers lurking in schoolyards but by offenders who were well known to their victims, such as parents, caretakers, paramours of the mother, babysitters, or friends of the family. In less than 4% of the cases was the sex offender a neighbor of the victim. Initial contact with victims was usually established more than one mile from the offender's home, and predatory assaults that occurred within a mile of the offender's residence typically involved adult victims. Though relationships with minor victims were sometimes cultivated within 2,500 feet of the offender's home, none took place in or near a school, daycare center, or park. The authors concluded that an offender's social relationship with a child victim is much more likely to

facilitate sexual abuse than residential proximity (Duwe, et al., 2008). Likewise, in a New Jersey study, results indicated that a minority (6.8%) of extrafamilial offenders first came into contact with their victim in one of several locations often statutorily defined as residentially off limits for sex offenders, including schools, parks, churches, and bus stops, but there was no way to know the proximity of the offender's home to that location (Colombino, Mercado, & Jeglic, 2010). In Jacksonville, Florida, the effects of a 2,500 foot residence restriction ordinance on sex crime rates and sex offense recidivism were investigated (Nobles, Levenson, & Youstin, forthcoming in the journal *Crime & Delinquency*). Using a quasi-experimental design, pre- and post-policy measures of recidivism were compared and no significant differences were found. As well, a trend analysis revealed no significant differences in sex crime arrest patterns over time. The results indicated that the city's residence restriction ordinance had no meaningful effect on sex crime rates or sex offender recidivism. The authors concluded that the residence restriction ordinance did not achieve its intended goal of reducing recidivism, and that these laws do not appear to be an effective strategy for preventing repeat sexual violence (Nobles, Levenson, & Youstin, in press).

- d. An expanding body of evidence indicates that housing availability is greatly diminished by residence restriction policies. In Orange County, Florida, the locations of over 137,000 residential parcels were analyzed and 95% were found to be located within 1,000 feet of schools, parks, daycares, or school bus stops (Zandbergen & Hart, 2006). A buffer zone of 2,500 feet resulted in exclusion of more than 99% of all

residential parcels and eliminated all but 37 properties in the entire county (Zandbergen & Hart, 2006).

- e. In New Jersey, 93% of Newark's residential territory is located within 2,500 feet of a school and therefore few addresses would be compliant with a housing restriction of that distance (Chajewski & Mercado, 2008). In four major metropolitan centers in South Carolina, only 9% of the 540,613 properties zoned for residential use were unoccupied or available for rent, and of those, 45% would not be compliant with a 1,000 foot zone around schools or daycares (Barnes, Dukes, Tewksbury, & DeTroye, 2009). Researchers in Colorado concluded that in urban areas, the large number of schools and childcare centers located within residential neighborhoods severely limited the areas in which sex offenders could reside if housing restrictions were implemented (Colorado Department of Public Safety, 2004).
- f. Residential restrictions can also create obstacles to offender reintegration. Several studies suggest that homelessness and transience have become more problematic for registered sex offenders. Larger buffer zones are correlated with increased transience and homelessness and reduced employment opportunities (Levenson, 2008). In a survey of RSOs in Oklahoma and Kansas, 54% reported that a housing restriction law forced them to relocate (Tewksbury & Mustaine, in press). In Indiana, 26% of sex offenders surveyed said that they were unable to return to their homes after incarceration, 37% were not allowed to live with family members, and nearly a third experienced a landlord refusing to rent to them or to renew a lease (Levenson & Hern, 2007). Many sex offenders in Florida and Indiana reported that affordable housing is less available due to limits on where they can live, and that they are made to live

farther away from employment, public transportation, social services, and mental health clinics (Levenson, 2008; Levenson & Cotter, 2005; Levenson & Hern, 2007). Similarly, New Jersey sex offenders indicated that residential restrictions have led to financial hardship and pushed them farther away from employment, treatment, and family support (Mercado, Alvarez, & Levenson, 2008). Escalating problems of homelessness and transience were noted in Broward County, Florida, where 39% of the subjects reported spending at least 2 days homeless or living with someone else and 22% said that they were forced to relocate more than twice (Levenson, 2008). Young adults seemed to be especially impacted by these laws; age was significantly inversely associated with being unable to live with family and having difficulties securing affordable housing (Levenson, 2008; Levenson & Hern, 2007).

- g. In California, sex offender homelessness has increased 24 times since the inception of residence restrictions in 2006 (California Sex Offender Management Board, 2011). Nearly one-third (32%) of sex offenders on parole in California are homeless. This problem is attributed to the implementation of the state's law restricting sex offenders from living within 2,000 of places where children congregate, virtually eliminating all housing in the state's major metropolitan areas. As well, a 100% increase in the number of "transient" sex offenders has been noted since 2007. The board concluded that there is "no evidence to conclude that residence restrictions are effective in reducing sexual reoffending or making communities safer" (p. 11). The board urged legislators to reconsider these restrictions (California Sex Offender Management Board, 2011).

- h. Residential restrictions regulate only where sex offenders sleep at night and do nothing to prevent them from engaging in inappropriate contact with children during the day. Though a sex offender may not live near a school, park or daycare center, he could easily drive or walk to a place where children congregate if motivated to do so.
- i. The impact of local residence restrictions often increases when, after one locality enacts such a restrictive ordinance, a domino effect results as surrounding localities pass similar ordinances in order to prevent exiled sex offenders from migrating to their communities,
- j. Contrary to the goal of preventing abuse, housing instability is consistently and strongly correlated with increased criminal recidivism, parole failure, and absconding. In a sample of over 6,000 criminal offenders in Georgia, each time a parolee relocated, the risk of being re-arrested increased by 25%, doubling the odds of recidivism by moving three times while on parole (Meredith, Speir, & Johnson, 2007). Residential instability was determined to be the most robust predictor of absconding in a study of over 4,000 parolees in California (Williams, McShane, & Dolny, 2000). In a national sample of probationers ($n = 2,030$), those who moved multiple times during their period of supervision were almost twice as likely as stable probationers to have a disciplinary hearing (Schulenberg, 2007). In a New Zealand study of sex offenders, poor housing accommodation was the aspect of reintegration most strongly linked with sexual recidivism (Willis & Grace, 2008). A subsequent study confirmed that poor reintegration planning characterized by unstable housing, unemployment, and a lack of social support predicted recidivism in a sample of 141 sex offenders from New Zealand (Willis & Grace, 2009).

- k. Residential restrictions are often based on the premise that most sex offenders reoffend, but recidivism rates are lower than commonly believed. The most compelling sex offense recidivism studies, conducted by Canadian researchers and involving over 20,000 sex offenders from North America and England, reported an average re-arrest rate of 14% over 4-6 years (Hanson & Bussiere, 1998; Hanson & Morton-Bourgon, 2005). Recidivism rates fluctuate according to risk factors such as criminal history, victim preferences, and offender age, but sex offenders are more likely to be rearrested for new non-sexual crimes than sex offenses (Bureau of Justice Statistics, 2003; Hanson & Bussiere, 1998; Sample & Bray, 2003, 2006) and are among the least likely criminals to kill their victims (Sample, 2006). Harris and Hanson (2004) concluded: “Most sexual offenders do not re-offend sexually over time ... this finding is contrary to some strongly held beliefs. After 15 years, 73% of sexual offenders had not been charged with, or convicted of, another sexual offence. The sample was sufficiently large that very strong contradictory evidence is necessary to substantially change these recidivism estimates” (p. 17). There is no dispute that a subgroup of sex offenders is likely to reoffend and pose a threat to public safety, but sex offenders are a heterogeneous group and not all pose equal risk.
- l. Residence laws also imply that children are at risk from predators lurking in schoolyards or playgrounds. The myth of “stranger danger” persists despite that most sexual perpetrators are well known to their victims. According to the Department of Justice most child sexual abuse victims are molested by family members (34%) or close acquaintances (59%) (Bureau of Justice Statistics, 2000). About 40% of crimes take place in the victim’s own home, and 20% take place in the home of a friend or

relative (Bureau of Justice Statistics, 1997). A Wisconsin study revealed that in 200 cases of recidivistic sex offenses none involved predatory sex crimes against strangers (Zevitz, 2006). In Minnesota, only 8 of 224 repeat offenses (3.6%) were perpetrated by a neighbor and most re-offenses committed against strangers involved an adult victim (Duwe, et al., 2008). Residence laws tend to be passed in response to anomalous cases rather than the statistical probabilities reported by researchers.

3. The sexual abuse of a child is an egregious act, and preventing the abuse of children is an important and worthy goal, but in the absence of empirical evidence demonstrating the effectiveness of residence restrictions in protecting children, preventing sexual violence, or reducing recidivism, it is my considered opinion that laws establishing residence restrictions on sex offenders impede rather than advance efforts toward this goal. This is because there are unintended consequences of these laws. Residence restrictions interfere with reintegration by diminishing housing availability and increasing the potential for transience and homelessness. This, in turn, undermines the very purpose of the sex offender registry by increasing the number of offenders who fail to register, abscond, or become more difficult to track and monitor and by increasing, in some cases, the risk of recidivism.

A handwritten signature in black ink that reads "Jill S. Levenson". The signature is written in a cursive, flowing style.

Jill S. Levenson, Ph.D.

Dated: April 11, 2012

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